In the Supreme Court

OF THE

United States

OCTOBER TERM, 1943

No. 604

INTERNATIONAL LADIES' GARMENT WORKERS' UNION (an unincorporated association); DAVID DUBINSKY (as president of said association); FREDERICK F. UMHEY (as executive secretary of said association); and LOUIS LEVY (as a vice-president of said association), *Petitioners,*

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO, and HONORABLE ELMER ROBINSON, as Judge of said Court, *Respondents.*

PETITION FOR WRIT OF CERTIORARI to the District Court of Appeal, State of California, First Appellate District, Division One and BRIEF IN SUPPORT THEREOF.

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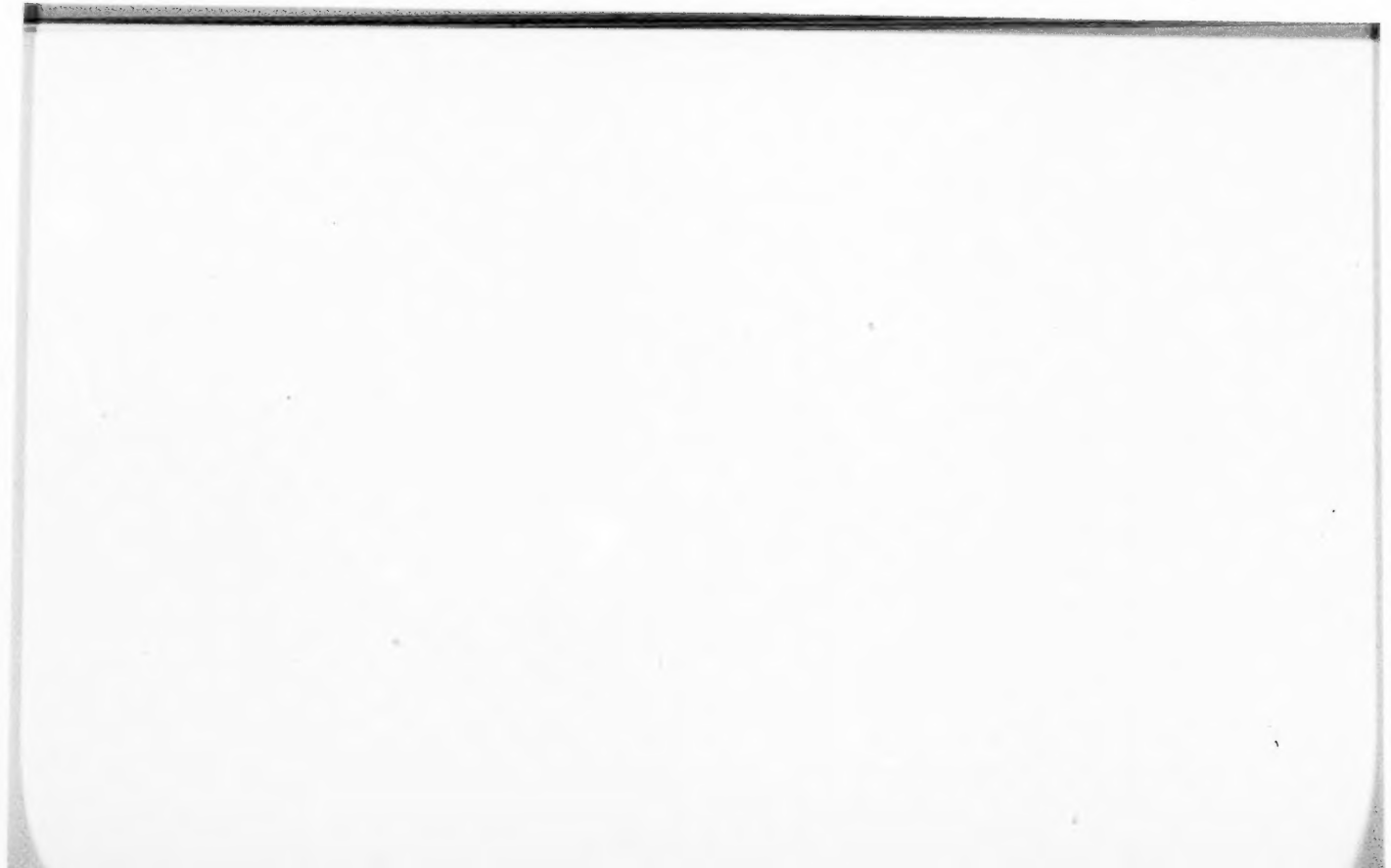

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Superior Court of the State of California, in and for the City and County of San Francisco, and Honorable Elmer Robinson, as Judge of said Court,

Respondents.

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to the District Court of Appeal, State of California,
First Appellate District, Division One.

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioners respectfully pray that a writ of certiorari issue to review the order of the District Court of Appeal, State of California, First Appellate District, Division One, which denied the plaintiffs' petition for a writ of prohibition against the respondents herein from attempting to exercise jurisdiction over the International Ladies' Garment Workers' Union, a non-resident of California. And in support of their petition, the following is respectfully shown to this Honorable Court:

A. SUMMARY AND STATEMENT OF THE MATTER INVOLVED.

The International Ladies' Garment Workers' Union (hereinafter referred to as the "International") is a voluntary unincorporated association and a bona fide labor union. David Dubinsky is the president and treasurer thereof, Frederick F. Umhey is its executive secretary and Louis Levy is one of its vice-presidents. The International is domiciled and resident in the State of New York. Under its constitution (Defts'. Ex. No. 14, Article I, Section 9), it is required to maintain its office in the City of New York. It does not engage in business.

There are affiliated with the International 325 local unions, located in various parts of the United States and Canada which have a combined membership of more than 285,000 persons. These locals are separate and distinct from the International and enjoy a large measure of autonomy. In San Francisco the knit goods workers comprise Local 191 of the International. (Record, p. 2.)

In 1937, Local 191 in San Francisco entered into a collective agreement with Gantner & Mattern Corporation

of California (hereinafter referred to as "the corporation"). The agreement expired by its terms, in 1939. After many months of negotiation for a new agreement, it became clear that the corporation did not intend to enter into an agreement on any basis suggested by Local 191. In March, 1940, Local 191 declared a strike against the corporation and undertook to boycott the corporation's products by advising the public of the facts involved in the dispute. In an effort to break that strike, the corporation sought to have its products manufactured in various factories operated by others in the East and Middle West.

To aid the strike, a group of citizens in New York City organized the "Gantner Mattern Strike Committee". It was headed by Louis Nelson, a resident of New York State, and manager of Knit Goods Workers' Union, Local 155, of New York City, which did not want goods made by its members to be used by the San Francisco corporation.

The Gantner Mattern Strike Committee in New York, and Local 191 of San Francisco, during the course of the strike, each separately (and never jointly) issued certain letters and leaflets which the corporation claims to constitute libels.

Naming the New York Local 155, the San Francisco Local 191, the Gantner Mattern Strike Committee, the International, and various individuals as co-defendants, the corporation filed its complaint (Exhibit A) against all of them in the Superior Court of the State of California for $1,750,000 as compensatory and exemplary damages for alleged libels.

There is no allegation that the International, as such, published a libel anywhere relating to the controversy. The only utterance of the International in connection with the corporation or the strike against it was a resolution

adopted by its biennial Convention in New York City in June, 1940, approving a "vigorous national boycott against the products of Gantner & Mattern * * * conducted in such states where the same is lawful * * * and that there be given full and complete publicity everywhere to the facts involved in the dispute". Whatever the International did in connection with the strike was done "outside the boundaries of California". (Ex. D, pp. 61-62.)

The corporation's claim that jurisdiction over the International has been acquired is bottomed upon service of process upon the manager of the San Francisco Joint Board, a delegated body of representatives of local unions in California having power to transact the business of common interest to all of them; by service of process upon a former officer of the San Francisco Local 191; by service of process upon a member of that local, and upon two vice-presidents of the International (neither of whom is named in the title) who were in California not as vice-presidents but as officers of local unions in California which are affiliated with the International. (Ex. D, pp. 55-6.) The International appeared specially, as did the persons upon whom service was made, and moved the respondent Superior Court to quash the service. They contended that the attempt of the courts of California to exercise jurisdiction over the International would violate due process of law and decisions of the Supreme Court of the United States because (1) the International is a New York labor union which does not transact business in California; (2) that even if the International does transact business in California, the tort, with which it is charged took place outside of California and did not arise from business transacted by it in the state and hence it could not be constitutionally held amenable to jurisdiction in this suit; (3) that no service under existing California state statutes or the common law could constitu-

tionally be effected upon the International; and (4) that no jurisdiction could be acquired over the International because of acts done by its affiliated local in San Francisco. (Record, pp. 5-6.)

The motions to quash the services before the respondent Superior Court were all denied except the one involving Jennie Matyas as manager of Local 191, and as organizer and educational director of the International, on the ground that she had discontinued her position prior to the date of service. (Ex. C.)

The International filed a petition for a writ of prohibition in the District Court of Appeal of California directed against the respondent Superior Court to restrain it from attempting to exercise jurisdiction over the International. That petition was denied (by a 2 to 1 vote) without hearing and without opinion (one justice dissenting). Reargument was sought and was likewise denied (by a 2 to 1 vote). Thereafter, the International sought the transfer of this case to the Supreme Court of the State of California. The petition for transfer was denied without hearing and without opinion (by a 4 to 2 vote).

B. THE JURISDICTIONAL STATEMENT.

Jurisdiction of this Court over the subject matter appears from the facts above set forth. Decisions of this Court have established that it is a denial of due process for a court to assert jurisdiction over non-resident partnerships or foreign corporations with respect to acts committed out of the state and not arising out of acts done within the state even though the partnership or corporation be doing business in the state. The same rule should be applied to labor unions because the requirements of

due process are no different for the partnership or corporation than for the labor union.

Where a writ of prohibition is sought to prevent a court from acting without due process and that writ of prohibition is denied, this Court has held that it has jurisdiction to review the denial upon proceedings for writ of certiorari in this Court.[1]

In *Bandini Petroleum Corp. v. Superior Court of the State of California,* 284 U. S. 8, 14, 76 L. Ed. 136, 144, Mr. Chief Justice Hughes said:

> "This Court has jurisdiction. The proceeding for a writ of prohibition is a distinct suit and the judgment finally disposing of it is a final judgment within the meaning of Section 237(a) of the Judicial Code, U.S.C. Title 28, Section 344."

Under California law[2] a defendant objecting to jurisdiction of the State Court over him must not permit the case to go to trial but must seek a writ of prohibition to prevent such trial.

The statutory warrant which sustains the jurisdiction of this Court is Section 237(b) of the Judicial Code (28 U. S. Code, Section 344).

In the instant case respondent Court, in order to uphold the service upon the International, a foreign labor union, construed Sections 382, 388 and 411 of the California Code of Civil Procedure in such fashion as to render them

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[1] A writ of certiorari is properly directed to the state Court which holds the proceedings as part of its own records and exercises judicial power over them. (*Van Huffle v. Harkelrode,* 284 U. S. 225, 230; 76 L. Ed. 256, 260 (1931).) Where the highest court of the state has declined to review the judgment of an inferior or intermediate court, the writ is properly directed to the inferior or intermediate court, as the case may be. (*Adam v. Saenger,* 303 U. S. 59, 82 L. Ed. 649 (1938).)

[2] *Remsberg v. Hackney Mfg. Co.,* 174 Cal. 799, 801; 164 Pac. 792 (1917);
Jardine v. Superior Court, 213 Cal. 301, 305; 2 Pac. (2d) 756 (1931).

unconstitutional. (These sections are set out in full in the accompanying brief.) Subdivision (a) of said Section 237 supports the jurisdiction of this Court in the instance of the alleged unconstitutionality of a state statute.

The questions involved in this case are substantial. The suability of national and international unions (and in connection with the acts of locals) in the various state courts is a matter of grave importance. This Court has not heretofore specifically passed upon the point. The respondent Court has ruled upon the issue in such a way as to create a new doctrine discriminating against labor unions. It subjects labor unions to a different rule from that which applies to non-resident individuals or partnerships or foreign corporations. It holds that a labor union may be within the jurisdiction of the State Court under circumstances which this Court has held will not permit a constitutional exercise of jurisdiction over other persons.

This case, therefore, also comes within the meaning of subdivision 5 of Rule 38 of this Court, which provides that a writ of certiorari will be granted where there are important reasons therefor, such as

> "(a) where a state court has decided a federal question of substance not theretofore determined by this court, or has decided in a way probably not in accord with applicable decisions of this court."

This petition for a writ of certiorari is timely. The petition for a writ of prohibition in this case was filed in the District Court of Appeal on August 9, 1943, and denied by that Court on August 23, 1943. A petition for rehearing was filed, and denied by the Court on September 22, 1943. Petition for transfer to the California Supreme Court from the District Court of Appeal was denied by the Supreme Court on October 21, 1943.

Petitioner in the first instance consistently relied upon the position that the attempted exercise of jurisdiction

deprived it of due process. In a footnote[3] we quote from the petition for a writ of prohibition filed in the California District Court of Appeal. (Record, p. 5.)

The District Court of Appeal entered an order denying the petition for writ of prohibition. (Record, p. 9.) No opinion was filed. However, the respondent Superior Court did render an opinion which is filed herein as Exhibit C. That opinion demonstrates that the principal reliance of petitioner at all stages rested upon its rights under the Federal Constitution. The first motion filed before the respondent Court (Exhibit B) expressly recites that the motion to quash service of summons would be based thereon. We quote therefrom in the footnote[4]

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[3] "Said alleged libels, slanders and other improper acts so far as they concern said association did not take place in California and did not arise out of any business transaction or acts committed by said defendant association. Said respondent Court may not constitutionally or otherwise exercise jurisdiction over the person of said defendant association with respect to said alleged libels or slanders or improper acts set out in the complaint.

"Any attempt of respondent Court to exercise jurisdiction over said association would be in violation of decisions of the United States Supreme Court and the Fifth and Fourteenth Amendments to the Constitution of the United States of America, and in violation of Article I of the Constitution of the State of California.

"Insofar as sections 388, 382 or 411 of the Code of Civil Procedure of the State of California are construed to provide for jurisdiction or service upon said association, the same and each of them are in violation of the constitutional provisions referred to above."

[4] "That said International Ladies' Garment Workers' Union and its said General Executive Board are not within the jurisdiction of this Court; that neither does any business in the State of California, and has no officer or agent therein upon whom any lawful or proper service of summons could be made. * * * That said * * * are resident in the State of New York. * * * to compel said association to appear in this action, more than 3,000 miles away from the place where it maintains an office and holds property, would be a violation of the Constitution of the United States and in particular the Fifth and Fourteenth Amendments thereof."

Respondent Court, recognizing that petitioning union rested its case on its constitutional right, said in its opinion (Ex. C, p. 15):

> "The major premise of defendants' contention is that the United States Supreme Court has forbade, as a matter of due process of law, a State Court from assuming jurisdiction over non-resident associations or corporations upon a cause of action which did not arise within that state."

The Court reviewed the decisions of this Court upon which we relied and, as will be seen from the accompanying brief, in effect overrules them.

C. THE QUESTIONS PRESENTED.

The issues presented herein do not appear in any opinion of the District Court of Appeal since that Court did not grant any hearing or issue any opinion. However, the respondent Court rendered an elaborate opinion and discussed the decisions of this Court relied upon by petitioner, and concluded that they were inconsistent with the "majority rule" as established by state courts and the "consensus of annotations on the subject".

The questions involved in the proceedings in the Court below and upon this petition for a writ of certiorari may be listed as follows:

1. May a labor union, resident in New York, be held subject to the jurisdiction of a California state court under circumstances which this Court has held would not render a non-resident individual, partnership or a foreign corporation subject to such jurisdiction?

(a) May a state court take jurisdiction over a non-resident labor union—an unincorporated association—with respect to a foreign tort where the tort does not arise

out of any business alleged to have been conducted by such labor union in such state?

2. Was it consistent with due process to construe certain statutes of the State of California so as to permit service upon a New York labor union, as to any cause of action, by service on merely (a) a member of one of its locals in San Francisco; or (b) an employee of a local board in San Francisco; or (c) upon so-called "vice-presidents" who were in California, not as such but in connection with their jobs on local unions or boards in San Francisco.

3. Was it consistent with due process to hold that the petitioning labor union was engaged in "doing business in the State of California" when its only activity was in aid of local organizations and at no time were commercial or for profit?

4. Was it not an abuse of due process to hold that the International was within the jurisdiction of the California state courts because of acts done by the San Francisco local or its manager? As there is no evidence to support any suggestion that the alleged torts arose out of business done by the International in California, was it proper to ignore the distinction between the local union and the International so as to treat the acts of the local as acts of the International and then assert jurisdiction over the International by reason of the acts of the local or its manager?

5. Was it contrary to due process to deny the motion to quash the said service of summons, and likewise to deny the writ of prohibition?

D. REASONS RELIED ON FOR ALLOWANCE OF WRIT.

This petition falls within the provisions of Supreme Court Rule 38, subdivision 5(a) in that:

1. A state court has decided a federal question of substance contrary to the applicable decisions of this Court. The respondent Court has in effect overruled certain decisions[5] of this Court.

2. The effect of the decision below is to deny a labor union the benefit of the due process clause of the Constitution and to hold it subject to the jurisdiction of state courts under circumstances in which a non-resident individual or partnership or foreign corporation could not be held subject to the jurisdiction of a state court, and to permit service upon it contrary to due process.

3. The opinion of the respondent Court shows upon its face that it does not regard said decisions of this Court as binding and that the same can be overruled by what it calls the "consensus of annotations" based upon what it calls "the majority rule" established by conflicting state decisions.

4. The question of the jurisdiction of the State Court over the International and national unions, particularly in relation to acts of locals, is of great importance, and involves grave constitutional questions of due process. The precise situation has never been passed upon by this Court although in situations involving non-resident individuals or partnerships and foreign corporations, this Court rendered decisions which the respondent Court refused to apply.

Upon the foregoing grounds and in order to correct a decision that is unjust to petitioner and also discriminates against labor unions contrary to settled law, your petitioner prays that this Honorable Court will be pleased to

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[5]These decisions and the opinion of the respondent Court refusing to apply them, are discussed in our brief at pages 15 and 22.

issue its writ of certiorari to the District Court of Appeal, State of California, First Appellate District, Division One, and to send to this Court for its review and adjudication the record and proceedings in the above entitled cause, and thereafter to make such order as may be just and proper.

San Francisco, California,
January 7, 1944.

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BRIEF IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI
to the District Court of Appeal, State of California,
First Appellate District, Division One.

A.

THE COURT BELOW RENDERED NO OPINION BECAUSE IT GRANTED NO HEARING. THE ONLY OPINION RENDERED WAS THAT OF THE RESPONDENT COURT.

The District Court of Appeal denied a hearing on the petition for writ of prohibition by a 2 to 1 vote. No opinion accompanied the order denying the petition. Likewise, the Supreme Court of California did not file any opinion when it denied (by a 4 to 2 vote) the petition for a transfer of the cause from the District Court of Appeal to itself. (Record, pp. 9, 25 and 50.)

The respondent Superior Court did write an opinion (filed herein as Exhibit C).

B.

STATEMENT OF JURISDICTIONAL GROUNDS.

A jurisdictional statement is set out on pages 4 to 8 of the accompanying petition for writ of certiorari, and is hereby incorporated to avoid unnecessary repetition.

C.

STATEMENT OF THE CASE.

A concise statement of the case material to this application is set forth on pages 1 to 4 of the accompanying petition.

In general, this is the principal question: Is it due process for a California Court to exercise jurisdiction over a New York labor union not resident in California with respect to alleged libels and slanders not committed by the said union in California and not arising from any business done by the said union in California?

The law is clear under decisions of this Court that a non-resident individual, partnership or foreign corporation would not be subject to such jurisdiction under the same circumstances.

The respondent Court disregarded the decisions of this Court because it characterized them as inconsistent with what it termed the "majority rule" as established by state courts and the "consensus of annotations on the subject".

Other questions are set forth in the petition and are discussed herein.

D.

SPECIFICATIONS OF ERROR TO BE ARGUED.

I. It was abuse of due process to hold the International, a labor union resident in New York, subject to the jurisdiction of a California court under circumstances which this Court has held would not render a non-resident individual or partnership or foreign corporation subject to such jurisdiction. Decisions of this Court have repeatedly held that state courts cannot take jurisdiction over non-resident individuals, partnerships or foreign corporations with respect to foreign torts where the tort does not arise out of any business alleged to have been conducted by such individuals, partnerships or corporations in such state.

II. It was error for the respondent Court to disregard the decisions of this Court merely because respondent thought those decisions contrary to the majority of State Court decisions or the so-called "consensus of annotations".

III. To sustain service upon the International in this case as to any cause of action is to deny to it due process of law.

IV. It was error to hold that the petitioning labor union was engaged in "doing business" in the State of California where its only activities were in aid of local organizations and at no time were commercial or for profit.

V. It was an abuse of due process to hold the International was within the jurisdiction of the California state courts because of acts done by the San Francisco local or its manager. There is no evidence to support the suggestion that the alleged torts arose out of business done by the International in California. Such suggestion could be justified only if the distinction between the local union and the International is ignored, and if the acts of the local are treated as if done by the International.

VI. (a) It was error to deny the motions to quash the alleged service of summons. (b) It was error to deny the writ of prohibition.

E.

ARGUMENT.

I. IT WAS ABUSE OF DUE PROCESS TO HOLD THE INTERNATIONAL, A LABOR UNION RESIDENT IN NEW YORK, SUBJECT TO THE JURISDICTION OF A CALIFORNIA COURT UNDER CIRCUMSTANCES WHICH THIS COURT HAS HELD WOULD NOT RENDER A NON-RESIDENT INDIVIDUAL OR PARTNERSHIP OR FOREIGN CORPORATION SUBJECT TO SUCH JURISDICTION.

As stated by the respondent Court (Ex. C, p. 15):

> "The major premise of defendants' contention is that the United States Supreme Court has forbade as a matter of due process of law, a State Court from assuming jurisdiction over non-resident associations or corporations upon a cause of action which did not arise within that State."

In support of this contention we relied principally upon decisions of this Court which include, among others, the following **with respect to non-resident individuals:** *Pennoyer v. Neff*, 95 U. S. 714, 24 L. Ed. 565 (1877), **with respect to non-resident partnerships:** *Flexner v. Farson* (1918), 248 U. S. 289, 63 L. Ed. 250; **with respect to foreign corporations:** *Old Wayne Mutual Life Assn. v. McDonough*, 204 U. S. 8, 51 L. Ed. 345 (1906); *Simon v. Southern Ry. Co.*, 236 U. S. 115, 59 L. Ed. 492 (1914); *Robert Mitchell Furniture Co. v. Selden Breck Cons. Co.*, 257 U. S. 213, 66 L. Ed. 201 (1921); *Chipman v. Jeffrey Co.*, 251 U. S. 373, 64 L. Ed. 311 (1920).

So far as these cases announce the rule forbidding jurisdiction over non-residents upon causes of action not arising out of local business, they are incorporated by the American Law Institute in the Restatement of the Law—Conflict of Laws. The appropriate sections read:

> "Section 86. A partnership or other unincorporated association by doing business in a state in which the partnership or association is subject to suit in the firm name, subjects itself to the jurisdiction of the state as to causes of action *arising out of the business there done.*"
>
> "Section 92. Doing Business. A state can exercise through its courts jurisdiction over a foreign corporation doing business within the state at the time of service of process as to causes of action *arising out of the business done within the state.*" (Italics supplied.)

Section 84 provides a similar rule as to individuals.

The respondent Court agreed that the cases cited supported our contention, but concluded that they had been in effect overruled by later decisions and that, in any event, the rule represents only the minority view. (Ex. C, p. 14.)

Thus it is plain that, although this Court has recognized that a non-resident individual or partnership or corporation cannot be subject to the jurisdiction of a state court with respect to a foreign cause of action not arising from business done in the state, the respondent Court has nevertheless refused to apply this rule in favor of a labor union. While the respondent Court purports to reach this discriminatory conclusion by the claim that the decisions of this Court do not state the proper rule, it is plain from the entire opinion that the respondent is influenced by its attitude against labor unions.[1]

(a) As to non-resident individuals or partnerships, this Court has repeatedly held that a state Court cannot take jurisdiction over them with respect to foreign causes of action which do not arise from business which they transact in the state. An attempt to exercise such jurisdiction violates due process.

Ever since the ruling of *Pennoyer v. Neff*, 95 U. S. 714, 24 L. Ed. 565 (1877) the courts have recognized the necessity under the Constitution, for personal service on the defendant within the territorial jurisdiction of the courts.[2]

While the foreign corporation which transacted business in the state was held subject to such process upon the theory that the state could *exclude* the foreign corporation and therefore could permit it to do such business under pain of serviceability on any cause of action the doctrine was specifically rejected as to non-resident part-

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[1]This is illustrated by the fact that it charges David Dubinsky and *every* witness connected with the Union with falsehood of almost every fact. (Ex. C. p. 5.) It intimates that the International might be termed an "economic royalist" (Ex. C. p. 48) and that its activities with respect to charitable contributions, health measures, educational and dramatic matters indicates that it constitutes a "radical departure from ordinary union functions". (Pr. Op. p. 68; Ex. C, p. 50.)

[2]Story, Commentaries on the Conflict of Laws (6th ed. 1865), Section 539; Lorenzen, Story's Commentaries on the Conflict of Laws—One Hundred Years After (1934), 48 Harv. L. Rev. 15.

nerships. *Flexner v. Farson*, 248 U. S. 289, 63 L. Ed. 250 (1918).

An unincorporated association is not the creature of the state. It has no power of perpetual succession. It more nearly resembles a partnership. This Court has never passed upon the suability of non-resident labor unions or other unincorporated associations. At the very least, the same safeguards against service upon a non-resident partnership should be applied in suits brought against non-resident associations.

Under the *Flexner* case, supra, the alleged service upon the International, a non-resident unincorporated association and a labor union, must be declared invalid lest there be a deprivation of constitutional rights.

To hold differently is to repudiate the doctrine of the *Flexner* case, supra. To repudiate the doctrine of that case would mean that a non-resident labor union can be served with process in any state upon all causes of action alleged against it, irrespective of where they arose. Such a decision would make every individual member of a local union affiliated with the International serviceable with process in every state for the purpose of obtaining jurisdiction over the International and would compel the International to defend itself thousands of miles from its resident or subject itself to a foreign judgment. If the Flexner doctrine is applied, a plaintiff will still have the right to sue a non-resident partnership or association on a foreign cause of action at the place of residence of the partnership or association.

It is true that certain limitations have been thrown about the Flexner doctrine. These exceptions permit the state to serve the non-resident individual or partnership upon a cause of action emanating from their acts committed in the state. No court has held that the serving state may exercise the asserted jurisdiction here: amena-

bility upon a foreign cause not arising from defendant's domestic act.

The motorist statute cases permit service on the foreign individual upon a cause of action arising from the negligent acts of the driver in the serving state;[3] the securities statute cases allow service upon causes of action growing out of securities transactions in the state[4] and a highly respected state court has expressly limited the doctrine to a "cause of action" which "arose out of a transaction of their business in the state".[5]

The variation of the *Farson* rule in these limited situations, rests upon the concept that so far as the non-resident has benefited from the protection of the state's laws, he should be amenable to its process. He benefits as to the *local* transaction and is therefore liable as to causes arising from it, but cannot be charged upon the foreign liability that does not so arise. Section 86 of the Restatement quoted above so provides and Section 92 expresses the same rule as to foreign corporations.

The International is therefore either not suable at all in California, under the *Flexner* case, or amenable *only* upon the foreign cause of action which arises from its business transacted in the state.

Since the International is a non-resident association and since the cause of action here did not arise out of business transacted by it in California, the service of process in California upon those who have appeared specially herein was invalid and certiorari should be granted to correct the unconstitutional abuse of that process.

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[3]*Hess v. Pawloski*, 274 U. S. 352, 71 L. Ed. 1091 (1927); *Kane v. New Jersey*, 242 U. S. 160, 61 L. Ed. 222 (1916).

[4]*Davidson v. Henry L. Doherty & Co.*, 214 Ia. 739, 241 N. W. 700 (1932); *Doherty & Co. v. Goodman*, 294 U. S. 623, 79 L. Ed. 1097 (1934).

[5]*Stoner v. Higginson*, 316 Pa. 431, 175 Atl. 527 (1934).

(b) As to non-resident corporations, this Court has repeatedly held that a state Court cannot take jurisdiction over them with respect to causes of action not arising from business transacted in the state. An attempt by a state Court to exercise such jurisdiction over a foreign labor union by analogy to a foreign corporation violates due process.

While the lower Court treats the International as a corporation, there are striking differences between them. The corporation is a highly integrated mechanism for the conduct of business and exercises complete control over its employed personnel; the labor union is a loosely organized mass of individuals over whom the union has only a tenuous control. Here, however, the lower Court inverts the process, holding the labor union to a greater amenability to service than the corporation. It upheld service upon the union although this Court exempts the corporation from service under parallel circumstances.

Foreign corporations have been held subject to service upon the theory of an express appointment of an agent for service or upon a so-called implied appointment. Upon either theory the service can extend only to causes of action which arise from business transacted by the corporation in the serving state.

(1) A corporation which has made no express designation of an agent to receive service is not subject to this Court's jurisdiction upon an implied appointment of an agent as to a foreign tort not arising from business transacted in the state.

In *Old Wayne Mutual Life Association v. McDonough*, 204 U. S. 8, 51 L. Ed. 345 (1906), this Court dealt with a Pennsylvania statute which provided that no foreign insurance company could do business in Pennsylvania until it had filed with the Insurance Commissioner a designation of him or of a specified agent to receive service of process. Suit was brought against such a foreign insurance corporation by serving the Pennsylvania Insurance Commissioner. After taking judgment in Pennsyl-

vania, plaintiff sued on the judgment in Indiana. This Court held that the Pennsylvania judgment was not entitled to full faith and credit *because the service in Pennsylvania lacked due process for the reason that it related to a cause of action not arising out of business done by the insurance company in Pennsylvania.*

The holding in this case was affirmed and followed in *Simon v. Southern Railway Company,* 236 U. S. 115, 59 L. Ed. 492 (1914).

These two cases express the present rule which has been upheld many times since.[6]

(2) Even if a corporation expressly appoints an agent for service of process under 'Sections 405 and 406a of the Civil Code of California such express designation must be construed as inapplicable to a cause of action not arising in the state from business transacted within the state.

Even if the rules with respect to corporations are applied to labor unions, there certainly is not in this case any *express* appointment of an agent for service. The striking fact is that even if there were, the corporation would still not be amenable under the California statutes for foreign torts not arising from domestic business.

The rule has often been repeated that the extent of the serviceability of a foreign corporation *which appoints an agent for service depends upon the language of the statute.*[7]

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[6]*Robert Mitchell Furniture Co. v. Selden Breck Construction Co.,* 257 U. S. 213, 66 L. Ed. 201 (1921); *Chipman Ltd. v. Jeffrey Co.,* 251 U. S. 373, 64 L. Ed. 314 (1920); *Fry v. Denver & R. G. R. Co.,* 226 Fed. 893 (N. D. Cal. 1915).

[7]See *Smolik v. Philadelphia & Reading C. & I Co.,* 222 Fed. 148 (S. D. N. Y. 1915); *Bagdon v. Philadelphia & Reading C. & I. Co.,* 217 N. Y. 432, 111 N. E. 1075 (1916), and cases cited infra.

This Court has likewise often held that in interpreting such statutes a strict rule of construction must be followed in order to avoid the hardships and injustices incident to a suit in a jurisdiction other than that in which the cause of action arose.[8]

In construing a state statute the court must find that the statute purported to cover the foreign tort not arising from business transacted in the jurisdiction.

The California statutes do not purport to embrace such a tort, and the Federal District Court of California has so held. In the recent case of *Miner v. United Air Lines*, 16 F. Supp. 930 (S. D. Cal. 1936) the Court found that the California codes did not provide for service on a foreign corporation on a foreign cause of action which did not arise from business transacted in the state. To the same effect: *Fry v Denver & R. G. R. Co.*, 226 Fed. 893 (N. D. Calif. 1915).[9]

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[8]*Robert Mitchell Furniture Co. v. Selden Breck Construction Co.*, 257 U. S. 213, 66 L. Ed. 201 (1921); *Missouri Pacific Railroad Co. v. Clarendon Boat Oar Co. Inc.*, 257 U. S. 533, 66 L. Ed. 354 (1922); *Morris & Co. et al. v. Skandinavian Insurance Co.*, 279 U. S. 405, 73 L. Ed. 762 (1928); *Hughes v. Johnson Educator Food Co.*, 14 F. Supp. 999 (D. C. R. I. 1936); *Moore v. National Hotel Management Corporation*, 21 Fed. Supp. 177 (N. D. Tex. 1937).

[9]It is perfectly obvious that even an express appointment under the California statute imposes amenability only for local transactions. Section 405, Chapter 16 of the Civil Code provides that "no foreign corporation shall transact *intrastate* business" unless it files a designation; the foreign corporation upon *withdrawing* from the state "surrenders its right to transact *intrastate* business therein" (Section 406); the foreign corporation "which has transacted *intrastate* business in this state and has thereafter withdrawn from business in this state" may be served in any action "brought in this state arising out of *such* business" (Section 406a); the penalty upon the corporation for not complying with the provisions of the chapter is, aside from fine, the forfeiture of its right to "maintain any action or proceeding upon any *intrastate* business so transacted in any court of this state" (Section 408); the foreign corporation may "surrender its right to engage in business in this state". The foreign corporation then

The respondent Court's holding that the International is amenable to California jurisdiction in this case on the erroneous ground that a foreign corporation which had made an express appointment could have been held on a foriegn tort not arising from business transacted in the state is a flagrant misapplication of the doctrines of this Court and a clear abuse of due process.

II. IT WAS ERROR FOR THE RESPONDENT COURT TO DISREGARD THE DECISIONS OF THIS COURT MERELY BECAUSE RESPONDENT THOUGHT THOSE DECISIONS CONTRARY TO THE MAJORITY OF STATE COURT DECISIONS OR THE SO-CALLED "CONSENSUS OF ANNOTATIONS".

Respondent's answer to the Supreme Court rule seems to be a conglomeration of unrelated arguments that this Court "modified" its views in 1922 in the case of *Missouri Pac. RR. Co. v. Clarendon Boat Oar Co. Inc.*, 257 U. S. 533, 66 L. Ed. 354 (Ex. C, p. 16); that the lower federal courts "lean towards" a different construction (Ex. C, p. 17); that the "majority rule in the state courts" is to the contrary (Ex. C, p. 18); that the "consensus of annotations on the subject" does not approve of the holdings of those cases although recognizing "that there is a conflict". (Ex. C, pp. 18-19.)

The opinion of the respondent Court further sets forth the "lack of support" for the "minority view," which is the term it uses to characterize the decisions of this

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is accorded the right to transact local business upon the designation of the agent. Its privilege relates to local business, and its corresponding liability for service relates to that business. These sections show that it is intended to cover the foreign corporation only as to local business. If the *express* appointment in California covers only local business and causes arising therefrom, certainly the *implied* appointment cannot be more extensive; it would be absurd to hold that the actual appointment *narrowed* the amenability of the corporation to service.

Court, and insists that one Circuit Court "has rejected the Simon and Old Wayne decisions" and that other federal decisions "have refused to apply" those decisions. It concludes with the assertion that it is not bound by the substantive rule developed by this Court.

Yet, because it fails to heed the distinction made by this Court between the express and the implied appointment, the respondent Court reached the unsupportable conclusion that the *sole and only* test of the question is a matter of construction of the state statute. The lower Court says:

> "In 1922, however, the United States Supreme Court *modified* its views on the subject by adopting an entirely different approach to the problem. In *Missouri Pac. Railroad Co. v. Clarendon Boat Oar Co. Inc.*, 257 U. S. 533, 66 L. Ed. 354, the court impliedly *rejected the notion that a question of due process was involved* and on the contrary held that 'provisions for making foreign corporations subject to service in the state is a matter of legislative discretion'. It further indicated that *the whole matter was simply one of construction,* by the court, of the state statute * * *" (Opinion, p. 16.)

However, it overlooked that in *the cases which it cites the involved corporations did, pursuant to state statutes, appoint an agent for service of summons.* Naturally, this Court held that the "whole matter" in such a case turned upon the construction of the statute—the extent of the consent to service which the corporation accepted in voluntarily acting under the state statute.

The respondent Court rested its decision largely upon its distinction between a so-called statutory agent and an actual agent. The same kind of argument advanced by respondent Court was rejected as fallacious in the cases of *Fry v. Denver & R. G. R. Co.*, 226 Fed. 893, and *Farmers & Merchants Bank v. Federal Reserve Bank,*

286 Fed. 566 (D. C. E. D. Ken. 1922). While the respondent Court relies for its distinction on *Bowers*, Process and Service, it omits to mention paragraph 339 on page 500 which declares "that if there is a difference, it is so infinitesimal as to be well-nigh imperceptible".

III. TO SUSTAIN SERVICE UPON THE INTERNATIONAL IN THIS CASE AS TO ANY CAUSE OF ACTION IS TO DENY TO IT DUE PROCESS OF LAW.

We have pointed out that this Court has held that California process cannot constitutionally extend to a foreign labor union sued upon the alleged commission of a foreign tort. We now suggest that the California statutes cannot constitutionally be relied upon as the basis of service of a foreign labor union *whether that union is served upon a domestic or foreign cause of action.*

Service was attempted upon (a) a member of one of the locals in San Francisco; (b), an employee of a local board in San Francisco; and (c), upon so-called "vice-presidents" who were in California, not as such, but in connection with their jobs on local unions or boards in San Francisco. (Exhibit D, pp. 55-6.)

Although Sections 388, 382 and 411 of the California Code of Civil Procedure as well as common law doctrine have been invoked to sustain service upon the International, their application would deny to the International due process of law.

(a) To hold the International under Section 388 of the California Code of Civil Procedure is to interpret the section so that it would be unconstitutional.

Section 388 provides:

"When two or more persons, associated in any business, transact such business under a common name,

whether it comprises the names of such persons or not, the associates may be sued by such common name, the summons in such cases being served on one or more of the associates; and the judgment in the action shall bind the joint property of all the associates, and the individual property of the party or parties served with process, in the same manner as if all had been named defendants and had been sued upon their joint liability."

Since the service may be made "on one or more of the associates", Section 388, *if* applicable to a foreign association, would sustain service upon such foreign association by service on a single member within the jurisdiction. In this very case Lyda Dunn, a member of the San Francisco local, and Henry Zacharin, a member of the San Francisco Joint Board, were served in order to extend California process over the International, domiciled some three thousand miles away.

The courts have condemned, as violative of due process, a statute which provides for service on associations by service upon an ordinary member of an association, and, which, as the instant statute, even seeks thereby to bind the "property of all the associates".[10]

A method of service which would hold the International, domiciled in New York, upon service of a working girl in a knitting mill in California, who may very well not notify the International of such service, violates due process of law.[11]

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[10]*Christian v. I. A. M.*, 7 F. (2d) 481 (D. C. E. D. Ky. 1925); *Singleton v. Order of Railway Conductors*, 9 F. Supp. 417 (D. C. S. D. Ill. 1935); *People v. Brotherhood of Painters*, 218 N. Y. 115, 112 N. E. 752 (1916); *McFarland v. Brotherhood of Locomotive F. and E.*, 193 La. 237, 190 So. 573 (1939); Restatement of the Law; Conflict of Laws, Sec. 75, p. 111.

[11]In the parallel situation of a foreign corporation, the courts have held that a statute which provides for service upon a foreign corporation doing business within the state by service upon a

On the other hand the application of Section 388 to a domestic association would entail no extra-state liability; thus such application of the section has been upheld. *Jardine v. Superior Court*, 213 Cal. 301, 2 Pac. (2d) 756 (1931). But the ruling as to the domestic association, although relied upon by respondent Court, has no bearing upon the case of a non-resident labor union.

Since it is axiomatic (*Bobe v. Lloyds*, 10 F. (2d) 730, C. C. A. (2d) (1926)), that a statute is not to be interpreted to effectuate an unconstitutional purpose, Section 388 must be applied only to domestic associations. Indeed, the language of Section 388 shows that such was the intent of the Legislature since it nowhere specifies foreign associations. Whenever the Legislature elsewhere in the codes has intended to include foreign associations it has specifically named them.[12]

(b) To hold the International under Section 382 of the California Code of Civil Procedure would be to deny it the protection of due process of law.

Section 382 provides:

> "Of the parties to the action, those who are united in interest must be joined as plaintiffs or defendants; but if the consent of any one who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a

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public officer not charged with the duty to notify the corporation is invalid since it is not calculated to give notice to the corporations. (*King Tonopah Mining Company v. Lynch*, 232 Fed. 485 (D. C. Nev. 1916); *Knapp v. Bullock Tractor Co.*, 242 Fed. 543 (D. C. S. D. Cal. 1917).

[12]Thus the method of serving foreign corporations and joint stock companies and associations set forth in Section 411, Subdivision 2 of the California Code of Civil Procedure is specifically labelled "Foreign corporations, etc"; Section 406a of the Civil Code likewise refers specifically to service of process upon a "foreign corporation".

common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all."

While a class suit, under such a statute as Section 382, may constitutionally bind the members of the class *who are within the court's jurisdiction*, it cannot bind a "class", most of whose members are *without the jurisdiction*. Since, in the instant case, neither notice nor opportunity to defend was given to *non-resident members of the "class" who are not before the Court*, there is a lack of the procedural due process required in a class suit.[13]

The failure of due process in the present case is demonstrated by the fact that hundreds of thousands of members of local unions, as well as local unions, affiliated with the International, who have not been served, and who have received no notice of this suit, and will have had no opportunity personally to defend themselves, may be liable to a personal judgment against them in this action.

The attempted use of Section 382 would work another manifest abuse of due process. The "represented" defendants may never secure a proper defense because the members of the "class" have adverse and conflicting interests. The interests of the locals and the International conflict since one may be bound and not the other. Likewise, the interest of the agents (the officers) and the principals (the members) conflict since, in the event of

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[13] *Hall v. Lanning*, 91 U. S. 160, 23 L. Ed. 271 (1875); *Postal Telegraph Cable Co. v. Newport*, 247 U. S. 464, 62 L. Ed. 1215 (1917); *Flexner v. Farson*, 248 U. S. 289, 63 L. Ed. 250 (1918); *Pennoyer v. Neff*, 95 U. S. 714, 24 L. Ed. 565 (1877); *Dohany v. Rogers*, 281 U. S. 362, 74 L. Ed. 904 (1930); *Chicago B. & Q. R. Co. v. Chicago*, 166 U. S. 226, 41 L. Ed. 979 (1896); 1 Freeman on Judgments (5th ed. 1925) Section 415; Note (1941) 26 Cornell Law Quarterly 317.

liability, the members would have an action against their agents. In such a case the class suit works a denial of due process.[14]

It may be seriously doubted whether under any circumstances a class suit may be instituted in an action at law in any state Court against a non-resident labor union which is composed of hundreds of affiliated locals scattered throughout many states of the country which in turn are composed of hundreds of thousands of members who are residents of different states.

In any event, Section 382 of the California Code can not be invoked because it is abundantly clear that this action was not commenced as a class suit. The title of the action shows that a class suit was not intended and none of the allegations essential for a class action are stated in the complaint.

(c) To hold the International under Section 411 of the Code of Civil Procedure would be to deny it protection of due process of law.

Section 411 provides as to serving a foreign corporation:

> "2. Foreign corporations, etc. If the suit is against a foreign corporation, or a non-resident joint stock company or association, doing business in this state; in the manner provided by Section 406a of the Civil Code."[15]

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[14] *Hansberry v. Lee*, 311 U. S. 32, 85 L. Ed. 22 (1939). See also *Lightle v. Kirby*, 194 Ark. 535, 108 S. W. (2d) 896 (1937); *Langson v. Goldberg*, 373 Ill. 297, 26 N. E. (2d) 111 (1940).

[15] The applicable portion of Section 406a provides as follows: "(Service of process). Process directed to any foreign corporation may be served upon such corporation by delivering a copy to the person designated as its agent for service of process or authorized to receive service of process, or to the president or other head of the corporation, a vice president, a secretary, an assistant secretary, the general manager in this State, or the cashier or assistant cashier of a bank."

To treat the International as an entity under Section 411 of the Code of Civil Procedure and thereby to attempt to serve its non-resident members would subject a non-resident member to a possible judgment without notice and an opportunity to defend. This violates the principles of the cases cited above, and in particular the rulings of *Pennoyer v. Neff*, supra, and *Flexner v. Farson*, supra.[15a]

The section, moreover, does not apply to a foregn labor union but to a "non-resident joint stock company or association doing business in this state". That the Legislature intended to apply the section only to *joint stock associations*, such as business trusts and not to associations like labor unions, is shown by the fact that the words "joint stock" modifies the word "association", by the fact that the "a" before the "non-resident" modifies both "company" and "association" and by the fact that the comma comes after the word "association".

We submit that the statute should not be given an interpretation which would render it unconstitutional when the direct interpretation would effect no such result.

(d) To hold the International may be served at common law would be to deny it the protection of due process of law.

A foreign labor union is not amenable to the jurisdiction of the serving state at common law. Not only is the general rule clear that a labor union cannot be sued by service upon it in its common name (63 C. J. Trade Unions, Section 91; Teller, Labor Disputes and Collective Bargaining, 1362, Section 462) but the attempt to extend the serving state's process to non-resident members of the

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[15a]The application of § 411 is patently violative of due process in this case since the so-called "vice-presidents" were not acting as such nor upon behalf of the International in California. (Exh. D, pp. 55-6, 567, 917.) The service is void on this ground alone. (*Knapp v. Bullock Tractor Co.*, 242 Fed. 543 (S. D. Cal. (1917); *McFarland v. Brotherhood of Locomotive F. & E.*, 193 La. 237, 190 So. 573 (1939).)

association, through such a device, would violate the principles discussed above. Such an attempt is a clear violation of procedural due process. (*Pennoyer v. Neff*, supra; *Flexner v. Farson*, supra.)

IV. IT WAS ERROR TO HOLD THAT THE PETITIONING LABOR UNION AS SUCH WAS ENGAGED IN "DOING BUSINESS" IN THE STATE OF CALIFORNIA WHERE ITS ONLY ACTIVITIES WERE IN AID OF LOCAL ORGANIZATIONS AND AT NO TIME WERE COMMERCIAL OR FOR PROFIT.

The uncontradicted affidavit of David Dubinsky and other testimony in the case is to the effect that the International did not engage in business for profit in the State of California or elsewhere and that the International was not and did not do business of any kind in California (Ex. D, pp. 557, 37, 45, 57-8, 2045.)

Due process forbids the exercise of jurisdiction by a state over a labor union which does no business within its borders. The term "business" refers to industrial enterprises or activity.[16]

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[16] *Westor Theatres v. Warner Bros. Pictures*, 41 Fed. Supp. 757 (D. C. N. J. 1941); *St. Paul Typothetae v. St. Paul Bookbinders' Union* (1905), 94 Minn. 351, 102 N. W. 725; *Finance etc. Co. v. Sacramento* (1928), 204 Cal. 491, 493, 269 Pac. 167 (1928).

V. IT WAS AN ABUSE OF DUE PROCESS FOR THE RESPONDENT COURT TO HOLD THAT THE INTERNATIONAL WAS WITHIN THE JURISDICTION OF THE CALIFORNIA STATE COURTS BECAUSE OF ACTS DONE BY THE SAN FRANCISCO LOCAL OR ITS MANAGER. THERE IS NO EVIDENCE TO SUPPORT THE PROPOSITION THAT THE ALLEGED TORTS AROSE OUT OF BUSINESS DONE BY THE INTERNATIONAL IN CALIFORNIA. SUCH SUGGESTION COULD BE JUSTIFIED ONLY IF THE DISTINCTION BETWEEN THE LOCAL UNION AND THE INTERNATIONAL IS IGNORED, AND IF THE ACTS OF THE LOCAL ARE TREATED AS IF DONE BY THE INTERNATIONAL.

Apparently the respondent Court recognized that it was in error in refusing to follow the decisions of this Court which hold that a state Court may not exercise jurisdiction over non-residents as to a foreign tort which does not arise from business they transact in the state.

Although its entire opinion treats the causes of action as foreign torts, the respondent Court attempts to bolster the decision by an alternative hypothesis based on alleged factual grounds. It intimates by the use of general language that the torts may have arisen out of activities by the International in California. But this attempt to suggest a factual basis for the decision fails in the face of the uncontradicted evidence.[17] Jurisdiction can not be supported by "facts" contrary to the record.

The Court's misstatement of the facts rests on two fundamental confusions.

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[17]All of the evidence on the matters discussed herein came from officers or employees of the International or its locals or from material published by them. The broad assertions by the Court are mere conclusions of law from uncontradicted facts, and hence, under general principles, are not binding on this Court. Furthermore, under California law the statements in the opinion do not constitute statements of fact binding upon Appellate Courts, and there were no express findings of fact filed. *Re Lasker*, 51 Cal. App. (2d) 120, 121-2, 124 Pac. (2d) 72 (1942); *DeCou v. Howel*, 190 Cal. 741, 214 Pac. 444 (1923).

First, the respondent Court ignores the difference between the local in San Francisco and the International and treats the acts of the local and its manager as though they were committed by the International.

Second, the respondent Court refers to various activities by the International or its supposed representatives in California and by merging and consolidating them with the *acts of the local* declares in general terms that the libels arose out of the activities by the International in California. We shall review these two matters under the following heading:

(a) The San Francisco local and the New York International are separate and distinct organizations.

(b) The alleged libels did not arise out of transactions of the International in California.

(a) The San Francisco local and the New York International are separate and distinct organizations.

Under the Constitution and practice of the International, the locals affiliated with the International are separate autonomous units. This appears from the uncontradicted affidavit of President David Dubinsky. (Ex. D, pp. 2022-2024, 2029-2042.)[18] The corporation recognized this by naming and suing the locals as associations separate from the International and by correspondence, negotiations and contractual negotiations with the local. (See footnote 18.)

[18]In its opinion (Ex. C, p. 6) the respondent Court characterized this affidavit as "replete with expressions of opinion, conclusions and arguments and obvious misstatements, part-truths and distortions of fact". However, the Constitution of the International is in evidence (Defendant's Ex. No. 14) and an examination of it will show that President Dubinsky construed that Constitution with accuracy and authority. In fact the corporation sued the International and its locals as separate associations (see Complaint, Ex. A, and paragraphs II, VI, VII, etc.) and its correspondence was addressed to the local (e. g. Plaintiff's Exs. 56, 38, 32, 37 and Defendant's Exs. 39, 36, 34, 35.) The complaint refers to contractual relations with Local 191 (Ex. A, pp. 16-17, and 19, and Ex. D, pp. 1672, 1684, 1706, 1701, 1712.)

As a matter of law, under these circumstances, the local union must be regarded as a separate and distinct identity from the national union with which it is affiliated.[19]

(b) The alleged libels did not arise out of transactions of the International in California.

1. The respondent Court states the libels *originated* with the strike, i. e., were "in furtherance of a strike declared in California against plaintiff San Francisco factory * * * *a strike declared by the local* * * * (Ex. C, p. 28.) The libels, then, did *not* originate from or arise from a transaction by the International.

2. The strike in California was called and conducted exclusively by Local 191 in San Francisco. (Ex. D, pp. 2048-9, 1843, 1861-3.) The International had nothing to do with the calling or conduct of the strike (Ex. D, pp.

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[19] *Christian v. I. A. M.*, 7 F. (2d) 481 (N. D. Kan. 1925); *Singleton v. Order of Railway Conductors*, 9 F. Supp. 417 (S. D. Ill. 1935); *People v. Brotherhood of Painters*, 218 N. Y. 115, 112 N. E. 752 (1916); *McFarland v. Brotherhood of Locomotive F. & E.*, 193 La. 237, 190 So. 573 (1939); *Dean v. International Longshoremen*, 17 Fed. Supp. 748 (W. D. La., 1936); *Milk Wagon Drivers Union v. Associated Milk Dealers*, 42 F. Supp. 584 (N. D. Ill. 1941); *United Mine Workers v. Coronado Coal Co.*, 259 U. S. 344, 393-396, 42 S. Ct. 570, 66 L. Ed. 975, 27 A. L. R. 762; *Truck Drivers Local No. 421 etc. v. United States*, 128 F. (2d) 227.

In *People v. Brotherhood of Painters*, 112 N. E. 752, 753, the Court says: ". . . the hypothesis that these three respondents (the foreign Bros., the local District Council, and the local Union) are to be considered as a single entity is negatived by the allegations of the petition of the realtor which clearly sets forth the separate existence of each, and prayed that a mandamus should issue against each of the respondents."

Indeed this Court has refused to merge the identities of parent and subsidiary corporations for purposes of service of process despite the domination of the subsidiary by the parent. (See *Peterson v. Chicago, Rock Island & Pacific Railway* (1907), 205 U. S. 364, 27 Sup. Ct. 513, 51 L. Ed. 851; *People's Tobacco Co. Ltd. v. American Tobacco Co.* (1918), 246 U. S. 79, 38 Sup. Ct. 233, 62 L. Ed. 587; *Cannon Mfg. Co. v. Cudahy Packing Co.* (1925), 267 U. S. 333, 45 Sup. Ct. 250, 69 L. Ed. 634.

California by statute has a similar rule. California Civil Code, Sec. 407.

61-64) although it did (as permitted by its Constitution) advance relief funds for unemployed strikers.

3. The only connection of the International with the San Francisco strike is the fact that in June, 1940, its convention approved the boycott invoked by the San Francisco local against the corporation. This convention was in New York City. If the International can be charged with any acts, those acts took place in New York.[19a]

This is corroborated by the uncontradicted affidavit of President David Dubinsky (Ex. D, pp. 61-62, 2051) which states in part:

> "Whatever activities were engaged in by the International Ladies' Garment Workers' Union in connection with the strike against Gantner & Mattern were done outside of the boundaries of the State of California."

4. So far as the alleged libels themselves are concerned no evidence was introduced to show participation by the International in a single libel.[20] There was no showing of a single act done by the International as such in the State of California in connection therewith.

5. The attempt to charge the International with the acts of certain persons in California as "representatives" of the International is contrary to the uncontradicted record. These persons are Matyas, Zacharin, Feinberg, Wishnak and Dubinsky. With the exception of Matyas

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[19a]California Courts do not hold such action illegal. (*Parkinson v. Building Trades Council*, 154 Cal. 581, 98 Pac. 1027 (1908).) The New York resolution approved the boycott "conducted in such states where the same is lawful * * * and that there be given full and complete publicity everywhere to the facts involved in the dispute".

[20]The complaint (although not offered in evidence) does not charge the International specifically with the commission of any libel and none of the 91 exhibits annexed to the complaint purport to be libels issued or committed by the International.

none is charged with involvement in the strike or the libels. At the most, they participated in various efforts from 1937 to 1941 to conciliate the controversy. The libels are alleged to have commenced April, 1940.

6. Miss Matyas was the manager of Local 191 in San Francisco, and, as such, participated fully in the conduct of the strike. Although the corporation expressly named her in the complaint as such manager (Ex. A, p. 4) the respondent Court treated her as the employee of the International and repeatedly refers to her acts as those of the International. However, her activities were always under the direction of the local and not under the International. (Ex. D, pp. 1821, 1823, 1843, 1846-7.) Although Miss Matyas received her salary from the International in accord with the practice of the latter to lend assistance to locals with need therefor (Ex. D. pp. 543, 1860, 1868, 1918), she was responsible to the local, as the International cannot appoint a manager for a local union (Ex. D, pp. 571, 525), and received her instructions from the local exclusively. (Ex. D, pp. 1820-1821, 1823, 1825-6, 1840, 1843, 1896, 146-7, 1059, 1055-6, 2048, 568, 530-1.) She did not purport to act on behalf of the International. (Ex. D, pp. 1824, 1826-8, 1854, 1859, 51.) Her testimony is corroborated by President David Dubinsky (Ex. D, p. 51), by the manager of the San Francisco Joint Board (T. p. 1218) and by one of the local strikers. (pp. 1056-8.) There is no testimony to the contrary.

As a matter of elementary law, the fact that Miss Matyas as manager of Local 191 received her wages from the International does not make the International responsible for her acts as the local's employee. Thus, it is well established that where a general employer lends his employee to another, and the employee is under the control

of the latter, the person controlling the employee and not the person paying him is responsible for his acts.[21]

7. There is another reason why the International cannot be held as principal for the acts of Matyas, Nelson or the other alleged representatives. The principal's liability for the acts of the agent is determined by the law of the place of appointment; here, the State of New York. Section 6 of the New York Civil Practice Act provides in part:

> "No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute * * * shall be held responsible or liable in any civil action at law * * * for the unlawful acts of individual officers, members or agents, except upon proof by the weight of evidence, and without the aid of any presumptions of law or fact, of (a) the doing of such acts by persons, who are officers, members or agents of any such association or organization, and (b) actual participation in, or actual authorization of, such acts, or ratification of such acts after actual knowledge thereof by such association or organization."
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> *Clevenger's Supreme Court Practice* (1941, New York), Sec. 876, sub. 6.

In order for the International to be bound under New York law by the acts of Matyas (in San Francisco), Nelson (in New York) or any one else purporting to represent it, there must be proof by the weight of evidence and without the aid of any presumption of law or fact of two requirements: (1) the doing of the acts by officers, members or agents of the association, and (2) actual partici-

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[21] 35 *Am. Jur.* 970, Sec. 541; *Burns v. Jackson* (1922), 59 Cal. App. 662, 211 Pac. 821; *Lowell v. Harris*, 24 Cal. App. (2d) 70, 74 P. (2d) 551 (1937); *Peters v. United Studios*, 98 Cal. App. 373, 277 Pac. 156 (1929).

pation in or actual authorization of the acts or ratification after actual knowledge of the acts by the association.

There was no attempt to prove, and indeed not the slightest evidence, that there was an actual authorization of the acts of Matyas, Nelson or the other alleged representatives, or a ratification of the acts after knowledge of them by the International. Neither was there proof that Matyas or Nelson acted as an officer, member or agent of the International with respect to the conduct which the Court described.

Under these circumstances, it is obvious that there is nothing in the record to support any general statements by the respondent Court that the International as such had anything to do with the libels which are the basis of suit. In view of the absence of facts to support such general statements it should be pointed out that under California law the burden of proof on the motion to quash service of summons was upon the corporation.[22]

It is thus apparent that there is no evidence to support the general statements that the libels and slanders arose out of the business of the International in California. The Court does not refer to any such acts by the International except by disregarding the distinction between the local and the International and except by treating the manager of the local as the employee of the International, although the uncontradicated evidence is to the contrary.

If the distinction between the International and the local is obliterated, the rules protecting a non-resident association from service would be completely abrogated.

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[22]*Fuller v. Lindenbaum*, 29 Cal. App. (2d) 227, 84 Pac. (2d) 155 (1938); *Jameson v. Simond Saw Co.*, 2 Cal. App. 582, 84 Pac. 289 (1906).

VI.(a) IT WAS ERROR TO DENY THE MOTIONS TO QUASH THE ALLEGED SERVICE OF SUMMONS. (b) IT WAS ERROR TO DENY THE WRIT OF PROHIBITION.

CONCLUSION.

The petition for certiorari should be granted.

Dated, San Francisco, California,
January 7, 1944.

Respectfully submitted,
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(12)

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1943

No. 604

INTERNATIONAL LADIES' GARMENT WORKERS' UNION (an unincorporated association); DAVID DUBINSKY (as president of said association); FREDERICK F. UMHEY (as executive secretary of said association); and LOUIS LEVY (as a vice-president of said association), *Petitioners,*

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO, and HONORABLE ELMER ROBINSON, as Judge of said Court, *Respondents.*

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI to the District Court of Appeal, State of California, First Appellate District, Division One.

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To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

A.

ANSWER TO PETITIONERS' STATEMENT OF THE ISSUES INVOLVED.

On pages 1 to 4 and again on page 8 of the petition for writ of certiorari petitioners purport to present a summary of the facts and a statement of the questions presented by the petition. Inasmuch as the entire petition and the brief in support thereof are based upon the assumption that the facts stated in the petition and the questions set forth in the petition represent the correct exposition of the facts and of the issues, we propose to analyze the same and to demonstrate that there is no legal issue before this Court for consideration.

When respondent Court made its decision in this matter it did so in the form of a lengthy momorandum opinion and decision, which is now designated by petitioners as Exhibit C. Exhibit C is not a mere memorandum opinion which is occasionally rendered by a trial Court after a decision on the merits. It is actually the very decision itself on the motions to quash, as is demonstrated by the last paragraph thereof, and the portion of the decision which precedes the last paragraph represents the *findings* of the Court supporting that decision.

This construction of Exhibit C was accepted by the District Court of Appeal and the Supreme Court of

the State of California and both Courts, on the basis of the memorandum opinion and decision of respondent Court, refused to even issue an alternative writ in view of the lengthy findings of respondent Court and the abundant evidence in support thereof introduced before respondent Court at the hearings upon the motions to quash. The transcript of the testimony and evidence taken in connection with the motions to quash consists of over 2000 pages and the actual time spent in Court in the taking of testimony was, at a minimum, 15 full Court days. In addition to the 2000 pages of testimony and the 12 affidavits, there were introduced into evidence a total of 112 exhibits running many thousand pages in length. After briefs were submitted by both sides running well in excess of 450 pages in length, the respondent Court rendered its memorandum opinion and decision, which is 63 legal size pages in length. The entire record was presented to the District Court of Appeal as well as to the Supreme Court of the State of California. The District Court of Appeal refused to issue an alternative writ of prohibition and the Supreme Court denied a hearing. No judge of either the District Court of Appeal or of the Supreme Court of California has voted in favor of petitioners on the merits of their petition, although one judge in the District Court of Appeal voted in favor of issuing the alternative writ so as to give petitioners a hearing and two judges in the Supreme Court likewise voted for a hearing in that Court.

Thus this Court is presented with a decision of respondent Court on a dilatory motion to quash service

of summons which decision has been affirmed by the highest Courts in California and is amply supported by thousands of pages of testimony and exhibits.

Notwithstanding that fact, petitioners now argue to this Court that the findings of respondent Court must be set aside and that this Court should accept as the *factual basis* of their petition a view or statement of the facts directly contrary to the findings of respondent Court and to the evidence in the record. This same effort was made, unsuccessfully, by petitioners before the District Court of Appeal and before the Supreme Court of California.

The importance of this point cannot be underestimated. In order to establish a Federal question in this case petitioners have presented a completely erroneous statement of both the facts and the issues.

In the first place, petitioners say that the issue to be decided by this Court is whether it is a denial of due process for the State Court to assert jurisdiction over a labor union with respect to acts "committed out of the state and not arising out of acts done within the state". Petitioners then maintain that this point was the one which petitioners "in the first instance" (page 6 of Petition for Writ of Certiorari) consistently relied upon "at all stages" of this case through the various Courts which have considered this matter.

All of the aforesaid assertions are incorrect. The respondent Court expressly held that some of the acts which are the basis of the libel suit *were* committed in the State of California and that in any event all of the acts, whether committed in the state or out of

the state, *arose out of the business and transactions and conduct of petitioners in the State of California.* As found by respondent Court:

> "The California Superior Court has jurisdiction over the subject matter of this action which is based upon wrongs definitely and clearly related to and arising out of transactions and conduct of defendant International in the State of California". (Exhibit C, page 4.)

> "There is not the slightest doubt that the publication of the libels upon which the plaintiff's cause of action is based was *'related to', 'connected with'* and *'grew out of'* transactions and conduct of both Local 191 and the International in California." (Exhibit C, page 27.)

The respondent Court not only made these findings but in great detail quoted from the voluminous evidence in the record which supports these findings.

Therefore, the major premise in the petition for writ of certiorari, namely, that a Federal question is presented as to whether the State Court has jurisdiction over a labor union on a "foreign cause of action" which did not arise out of transactions or acts of that union in the State of California is erroneous as that question is not involved at all in this proceeding and therefore there are no grounds for the issuance of the writ of certiorari.

It is true that commencing at page 33 of the brief in support of the petition for writ of certiorari petitioners make a lame effort to reverse the findings of the respondent Court that the alleged libels arose, grew out of, and were connected with transactions and acts

of the International in California. Out of the many thousands of pages of the transcript and of the exhibits in the record a few isolated references from the transcript or from the exhibits are mentioned at pages 33 to 35 of petitioners' brief in the expectation that this Court will reverse the finding of the respondent Court although that finding is not only supported by the overwhelming preponderance of the evidence in the record but was affirmed by both the District Court of Appeal and the Supreme Court of California when the same argument was presented to those Courts by petitioners. We do not conceive it to be the duty and task of this Court to reverse a finding, correctly made and overwhelmingly supported by the evidence, in order to find a Federal question upon which a petition for certiorari may be based.

Secondly, petitioners are in error in asserting that the issue of whether a State Court has jurisdiction over foreign causes of action not arising from business transacted in the state was raised by them "in the first instance" and was the principal issue raised by petitioners at all stages of the proceedings. As emphasized by respondent Court in its decision (Exhibit C, page 12):

> "This objection to jurisdiction was not raised by defendant International in the motions made by the defendant to quash service of summons".

Although the ruling of respondent Court on that issue was characterized by petitioners before the District Court of Appeal and in the Supreme Court of California as "revolutionary and extraordinary", yet

petitioners thought so little of this point when they filed their motions to quash that it is not even mentioned in any of the 17 motions filed by them! Nowhere in any of the motions is it asserted, as one of the grounds for the motions to quash, that the International union cannot be sued in California upon a foreign cause of action and that to do so would violate due process of law. Thus, this alleged objection to jurisdiction, supposedly resulting in an "innovation" in the law and a "discrimination" against labor unions, was purely an afterthought of counsel and does not *even to this date* appear in any formal motion filed by petitioners. This afterthought has been so tortured and twisted and expanded until we find that the original and the only formal basis for petitioners' objection to the jurisdiction of the Superior Court, namely, that defendant union is a New York union and is not *doing business* in California, was *not even mentioned* in the petition that was filed for a hearing in the California Supreme Court and is given only ten lines of discussion in the brief (page 30) filed in support of the petition for writ of certiorari filed with this Court!

This fact is emphasized to place the motions to quash in their true light, namely, as mere dilatory pleas filed by petitioners in the hope of delaying the trial of the action on its merits. In this respect petitioners have succeeded very well since the summons in the action was served in November, 1941, and no pleading has yet been filed by petitioners.

Although in fact no issue is actually before this Court as to whether a State Court can obtain juris-

diction upon a foreign cause of action unrelated to business transacted in the state, we propose to answer petitioners' arguments as if that issue were before the Court, in order to show that under no theory are petitioners entitled to a writ of certiorari.

B.

CORRECTION OF STATEMENT OF PETITIONERS AS TO DECISION OF RESPONDENT COURT WITH REFERENCE TO THE UNITED STATES SUPREME COURT DECISIONS ON THE SUBJECT.

Petitioners throughout their petition for writ of certiorari and throughout their brief have erroneously stated that respondent Court has endeavored to "overrule" decisions of the United States Supreme Court on the question of whether a State Court may obtain jurisdiction upon a foreign cause of action unrelated to transactions occurring within the state. A careful reading of the memorandum opinion and decision of respondent Court (Exhibit C, pages 15 to 21) demonstrates beyond contradiction that at no time did respondent Court undertake to "overrule" or even to ignore any decision of the United States Supreme Court. Respondent Court, to the contrary, cited the decisions of the United States Supreme Court as well as the decisions of the State Courts on the subject. In doing so it called attention to the fact that the only authorities cited by *petitioners* on the question of whether due process would be violated if the State Court claimed jurisdiction over a non-resident *corporation* upon a foreign cause of action

were the decisions of *Old Wayne Mutual Life Association v. McDonough,* 204 U. S. 8, 51 Law. Ed. 345, decided in 1906, and *Simon v. So. Ry. Co.,* 236 U. S. 115, 59 Law. Ed. 492, decided in 1914. Both of these decisions had reference to *substituted* service upon a *public official* of a state. The Court then referred to later decisions of the United States Supreme Court, particularly that of *Mitchell Furniture Company v. Selden-Breck Construction Co.,* 257 U. S. 213, and *Missouri Pacific Railroad Co. v. Clarendon Boat Oar Co., Inc.,* 250 U. S. 533, 66 L. Ed. 354, both decided in 1922, together with seven very recent Federal Circuit Court and District Court decisions. The Court properly read these later decisions as holding that where in an issue arising in a Federal Court a state statute is relied upon as supporting the exercise of jurisdiction by the State Courts over a foreign corporation with respect to a foreign cause of action, *in the absence of any express provision in the statute and in the absence of any local construction of the statute by a State Court* the Federal Courts should not *construe* the state law to extend to suits arising out of business transacted by the foreign corporation out of the state. As correctly analyzed by respondent Court no decision of the United States Supreme Court since the *Missouri Pacific Railroad Company* and the *Mitchell Furniture Company* cases has held, in the absence of any question of a burden upon interstate commerce or the like, that a federal or constitutional question is involved in an action in a *State* Court against a foreign corporation upon a foreign cause of action. The only issue that occasionally

comes up in the Federal Courts for decision on this matter arises where the State Courts have *not* construed the state law purporting to grant jurisdiction over foreign corporations but not expressly stating whether the jurisdiction extends to foreign causes of action. Under such circumstances a few of the Federal District Courts have been inclined to follow the rule of the *Missouri Pacific Railroad Company* and the *Mitchell Furniture Company* cases of strictly construing these statutes so as not to encompass foreign causes of action, particularly where process was served upon a public official of the state. However, the great majority of the recent decisions of the Circuit Courts and the District Courts are inclined to follow the rule, almost universally applied by the State Courts, of liberal construction of the state statutes to include foreign causes of action.

In addition to the federal decisions on the matter, respondent Court cited two leading State Court decisions on the issue of due process of law, namely, *Trojan Engineering Corporation v. Greene M.T.P. Corp.* (Mass. 1936), 200 N. E. 117, and *Southern Ry. Co. v. Parker,* 21 S. E. (2d) 94 (1942), which held that due process of law was not denied when statutes identical with those of California were construed to provide for service of summons on foreign corporations with respect to foreign causes of action, particularly where no issue is involved of substituted service upon a public official but local agents of the foreign corporations were served with summons.

The decision in the *Trojan* case came up for consideration by the First Circuit Court of Appeal in *Canadian Pacific Ry. Co. v. Sullivan,* 126 Fed. (2d) 433. Inasmuch as a writ of certiorari was denied by the United States Supreme Court (1942), 316 U. S. 676, 86 L. Ed. 1766, 62 Sup. Ct. 1291, thus indicating an approval of the holding in the *Trojan* case, we cite the Canadian Pacific Ry. decision as direct authority on the subject. In that case the issue was presented as to whether service of summons on a commissioner of corporations was valid with respect to a foreign cause of action. The Federal Circuit Court cited the *Trojan Engineering Corporation* case and noted that the Massachusetts State Courts had construed the Massachusetts law (almost identical with Section 411 of the California Code of Civil Procedure) on the alternative method of service provided in the law (namely, service upon an officer of the corporation in the state) as validly applying to actions involving foreign causes of action. The Court then held:

> "We see no reason why one method of service should be held to be valid in actions like the present and the alternative method of service should not * * * we conclude that the defendant's rights under the due process clause have not been infringed."

Irrespective, however, of the approach by the Federal Courts on the matter of interpretation of these statutes, all of the Federal Courts, including this Court, have uniformly held that *whenever there has been a local construction by the State Courts of the*

state statute or whenever the state statute in so many words purports to apply to foreign causes of action such construction and such a provision is valid and does not violate due process of law and the exercise of jurisdiction by the State Courts under such circumstances over foreign corporations or foreign associations even with respect to foreign causes of action cannot be questioned.

As stated by the Federal District Court of Louisiana in *Lusk v. Pacific Mutual Life Insurance Co.*, 46 Fed. (2d) 502, where a state statute provides a procedure for insuring notice or knowledge to a foreign corporation of the bringing of the action:

> "The question * * * is not one of due process of law, but as to the scope and meaning of the statute as to whether it was intended to include causes of action arising elsewhere than in the state."

Accordingly it has been uniformly held that the Federal Courts will follow the construction and effect given by the State Courts to the state statutes:

> "The construction and effect given by the state court to a state statute of this character * * * will be followed by federal courts sitting within that jurisdiction."
>
> *Massachusetts Bonding & Ins. Co. v. Concrete Steel Bridge Co.*, 37 F. (2) 695, 696 (1930 C.C. 4th).

> "The Supreme Court of Missouri has construed and given effect to this statute in several different cases, and, that being so, its construction

is binding upon the federal courts within that jurisdiction."

Saunders v. London Assur. Corp., 76 F. (2) 926, 927 (C.C. 8th, 1935).

Here in the instant case we have a situation where the California State Courts, from the Superior Court right clear through to the District Court of Appeal and the Supreme Court of the state, have uniformly construed the state statutes, *three* in number, as expressly granting to the State Courts jurisdiction over foreign associations (and foreign corporations) on foreign causes of action. This construction is in line with the great weight of American authority on the subject since most of the State Courts of this country have adopted the same rule in construing their own statutes, which parallel in many respects the language and terminology of the California statutes. Therefore, the construction placed upon the California statutes by the California Courts is binding upon this Court and the effort of petitioners at pages 24 to 29 to have this Court reverse that interpretation should be disregarded.

As a matter of fact the very question raised by petitioners was passed upon many years ago by this Supreme Court. As developed in the memorandum opinion and decision of respondent Court (Exhibit C, page 23), the California statutes had been construed by the Federal Circuit Court of Appeals of the 9th Circuit as well as by the Federal District Court in California in the identical manner as that of the re-

spondent Court in the instant case, and that construction received the attention of the United States Supreme Court. We have reference to the cases of *Denver & R. G. R. Co. v. Roller,* 100 Fed. 738, and *Mauser v. Union Pacific Rd. Co.,* 243 Fed. 274. As stated by respondent Court in its memorandum opinion and decision (Exhibit C, page 23):

> "These decisions (together with *Moore Machinery Company v. Stewart Warner* (D.C.N.D. Calif. 1939), 27 Fed. Supp. 526, held that the California statutes expressly authorized jurisdiction over a foreign corporation on a cause of action which arose out of the State of California. The Roller decision was interpreted by the Court in the Mauser case as having received the approval of the United States Supreme Court in the case of *Green v. Chicago, Burlington & Quincy Ry. Co.,* 205 U.S. 530, 533, 27 Sup. Ct. 595, 596. It has also been cited with approval by the California District Court of Appeal in the case of the *Thew Shovel Company v. Superior Court,* 35 Cal. App. (2d) 183 at 192."
>
> "The Mauser decision is cited in the California Annotation to the Restatement of Conflict of Laws at pages 45 and 46."

Allegedly contrary decisions of District Courts, such as that of *Fry v. Denver & R. G. R. Co.* (1915), D.C. N.D. Calif. 1915, 226 Fed. 893, have been correctly distinguished by respondent Court in its opinion and decision upon the grounds that they have been rejected as authority by both State and Federal Courts. (Exhibit C, pages 23-24.)

Petitioners have placed considerable reliance upon the decision of *Miner v. United Air Lines Tr. Co.*, 16 Fed. Supp. 930, 931. However, the District Court in that decision expressly held that it decided as it did because the California Supreme Court had not yet interpreted the California laws so as to cover foreign causes of action and that in the absence of a construction by the California Courts, the Federal District Court was not required to construe the law to cover foreign causes of action. This ruling obviously cannot be considered authority today in view of the construction of the California statutes made by the California Courts in the *instant* proceeding.

Thus we find that contrary to the major premise in petitioners' brief in support of the petition for writ of certiorari the Federal Courts do not hold that it is a violation of due process of law for foreign corporations to be subjected to the jurisdiction of the State Courts even with respect to a foreign cause of action. As a matter of fact, the chief authorities relied upon by petitioners, besides the *Old Wayne* and *Simon* decisions, are Sections 86 and 92 of the American Law Institute, Restatement of the Law, Conflict of Laws. However, the Restatement, contrary to counsel's interpretation, is *silent* on the issue of whether or not a corporation or an association can be sued upon a foreign cause of action and Sections 86 and 92 merely state that corporations and associations *can* be sued in the firm name on causes of action arising out of business done in the state.

The major premise of petitioners' argument having no basis or foundation, the balance of the argument falls of its own weight. If corporations can be subjected to the jurisdiction of the State Courts upon foreign causes of action petitioners must concede that associations such as labor unions could likewise be subjected to the jurisdiction of the State Courts. Petitioners' argument is that a foreign corporation cannot be subjected to jurisdiction and therefore a discrimination results when labor unions are made subject to the jurisdiction of the State Courts on such matters. However as previously developed in this brief, corporations do not have that right of immunity and therefore to claim immunity for labor unions is to demand that they be given a unique right not enjoyed by corporations or by other associations.

Contrary to the inferences in petitioners' brief, the respondent Court did not attempt to *impose* upon labor unions a rule applicable only to corporations. It was the International union that argued in the State Courts and that now argues before this Court that the decisions with respect to *corporations,* namely, the *Old Wayne* and *Simon* decisions, should be applied to labor unions. It being demonstrated that these two decisions are inapplicable the International union then takes the position that it is erroneous to apply to labor unions the principles of jurisdiction which have been adopted with respect to foreign corporations. This argument is made in the face of the case cited by respondent Superior Court in its memorandum opinion and decision (Ex-

hibit C, page 40), namely, *Brotherhood of Railroad Trainmen v. Cook,* 221 S.W. 1049, holding that since an international trade union occupies an intermediate position between a partnership and a corporation, both the law of corporations and the law of partnerships, in the absence of statutory regulations, are to be resorted to and a choice made between the law of partnership and that of corporations depending upon the nature of the feature under consideration. Furthermore, they ignore the references in the memorandum opinion to the principles stated in *Corpus Juris* to the effect that such associations are deemed to be quasi corporations for purposes of service of summons and jurisdiction. Finally, petitioners have omitted the complete reference to Section 86 of the Restatement, Conflict of Laws, particularly the comment to Section 86-(1) which reads:

> "In some states, by statute, partnerships and other unincorporated associations are subject to suit in the firm name. Under these statutes a partnership or other unincorporated association by doing business within the state subjects itself to the jurisdiction of the state *to the same extent* to which a foreign corporation subjects itself to the jurisdiction of that state."

This comment was the basis of the decision of *Western Mutual Fire Insurance Co. v. Lamson Bros. & Co.* (1941), 42 Fed. Supp. 1007, which held that the Court had jurisdiction over an Illinois partnership in an action in personam (conversion) by service of process on the manager of the partnership offices in Iowa.

California has a statute on the subject of service of process on foreign copartnerships, Civil Code Section 2472, similar to the statute with reference to service upon foreign corporations and associations.

The California statutes have been expressly construed to subject unincorporated associations and partnerships to suit in the firm or association name. The principal decision on this subject is that of *Jardine v. Superior Court*, 213 Cal. 301, 2 P. (2d) 756 (1931). That decision quoted extensively from other cases involving international and national labor unions and similar associations and held that such organizations under the California statutes may be sued as an entity and in their association name and irrespective of the fact that they may not be doing business in the state in a *commercial* sense. The *Jardine* decision relied upon such leading cases as *Pacific Typesetting Co. v. International Typographical Union*, 216 Pac. 358; *State ex rel. Griffith v. Knights of The Ku Klux Klan* (Kan.), 232 Pac. 254, 37 A.L.R. 1267, appeal to United States Supreme Court *dismissed for want of a Federal question*, 273 U.S. 264; *Knights of The Ku Klux Klan v. Commonwealth* (Va.), 122 S.E. 122; *Fitzpatrick v. International Typographical Union*, 194 N.W. 17.

The *Jardine* case was appealed to the United States Supreme Court and this Court in a *per curiam* decision (284 U.S. 592) held:

> "The appeal herein is dismissed for the want of a substantial Federal question. *Sugg v. Horton*, 132 U.S. 524; *United Mine Workers v. Coronado*,

259 U.S. 344. In accord, see *Operative Plasterers International Association v. Case,* 93 Fed. 2nd 56."

It is, of course, obvious from the authorities cited above in this brief that the assertion in petitioner's brief on page 17 that "This court has never passed upon the suability of non-resident labor unions or other unincorporated associations" is erroneous. To the contrary, there are many decisions not only of this Court, but of other Federal Courts on the subject, particularly since the *United Mine Workers v. Coronado Coal Co.* case, referred to in the *per curiam* opinion in the *Jardine* case.

Thus it appears that contrary to the arguments advanced in petitioners' brief in support of the petition for the writ of certiorari, the United States Supreme Court has repeatedly indicated that no federal question is involved or is presented when a state Court construes its own state statutes to apply to labor unions or other unincorporated associations, irrespective of whether they are foreign associations or domestic associations.

As a matter of fact, petitioners have not cited one solitary decision in the United States holding that an international labor union, or for that matter any unincorporated association, cannot be subjected to the jurisdiction of a State Court, whether on domestic causes of action or on foreign causes of action! Without authority in support of their position petitioners are maintaining that this International union, merely because it has offices in another state, is immune to

judicial process in California as a *defendant,* although that very International union (see *Levy v. Superior Court,* 15 Cal. (2d) 692, involving the *same* petitioners as in this proceeding) can prosecute actions against California employers and other residents in the California Courts.

Before leaving this subject we emphasize again, as did the respondent Court in its memorandum opinion and decision, that the issue of the ultimate *liability* of the union or of its individual members is not involved at all in this proceeding. Counsel for petitioners do not appear to understand the difference between the *procedural* issue of obtaining jurisdiction and the *substantive* issue of liability. Furthermore, counsel are in error in repeatedly stating throughout their brief that by obtaining jurisdiction over the union as an "entity" the plaintiff is attempting "to serve its non-resident members" (page 29 of brief in support of petition for Writ of Certiorari) and is attempting to get a judgment against individual members of the union, particularly non-resident members. The respondent Court in its opinion and decision (Exhibit C, pages 43, 39) expressly held that the issue as to whether California has jurisdiction to impose a personal judgment against individual non-residents who are members of the International union is not present in the instant case. The plaintiff in the action has not asked for and has expressly disclaimed any request for a money judgment against a non-resident individual who had not been served with summons and no motions to quash

had been filed on behalf of *any* individual members, as such, of the International.

Although specific discussion of the various California statutes is omitted from this brief in view of the adequate consideration given to them by the respondent Court in its opinion and decision, approved by the highest State Courts in California, we pause to quote from one portion of the respondent Court's decision (Exhibit C, pages 40-41) which rejected the interpretation of petitioners that Section 411 of the California Code of Civil Procedure applies only to "joint stock associations":

> "In this case Section 411 of the Code of Civil Procedure validly applies to non-resident associations and is not restricted to 'joint stock associations'. (*State ex rel. Cook v. District Court* (Mont.), 58 Pac. (2d) 273, referring to Sections 388 and 411 of the California statutes in interpreting an identical statute of Montana; *Pacific Typesetting Co. v. International Typographical Union* (Wash.), 216 Pac. 358.) In adopting as the mode of service upon a non-resident association the precise method of service used upon foreign corporations the California statute has merely followed the method adopted in most of the States."

C.

ANSWER TO CONTENTION THAT THE CLAIM OF JURISDICTION OVER THE INTERNATIONAL IS BASED UPON SERVICE OF PROCESS UPON AN INDIVIDUAL MEMBER OF THE UNION OR UPON LOCAL OFFICERS.

Throughout the brief in support of writ of certiorari counsel has maintained that the basis for the

exercise of jurisdiction over petitioners is service upon some individual members of the union and some local officers of the local union. This assertion is directly contrary to the facts, as the memorandum of opinion and decision of respondent Superior Court clearly establishes. The principal service relied upon to sustain jurisdiction is the service of summons upon Louis Levy and Rose Pesotta, who are vice presidents of the International Ladies' Garment Union and who have their offices in California. Although petitioners gratuitously state that these two individuals did not act as vice presidents in California, this assertion is contrary to the express findings of respondent Superior Court, which findings are amply supported by voluminous evidence in the record.

The activities of Louis Levy particularly received the extended consideration of respondent Superior Court since, as stated in the memorandum of opinion and decision (Exhibit C, page 56), Louis Levy has been described by the International in its official publications and by Levy himself in sworn Court documents as "Vice President and Pacific Coast representative and director of the International, as well as executive in charge of its Pacific Coast operations". The respondent Court has outlined in detail (Exhibit C, pages 56-58) the activities in California of the International officers, including the vice presidents and the International organizers, in carrying on the affairs and the business of the International in California, and in complete repudiation of the arguments made by petitioners, respondent Court held (Exhibit "C", pages 58-59):

"The contention of defendant International that the activities of its officers and agents in California have been and are conducted and performed by them on behalf of or as advisers to the locals and joint boards located in the State and are not activities of the International is thoroughly contradicted by the Constitution of the International, by the official publications of the International, by the nature of the activities themselves, and by the relations between the International and its subdivisions. It cannot be gainsaid that the officers and employees of the International, particularly the vice-presidents and the general or international organizers, do not perform their duties as advisers to or on behalf of the locals or joint boards but perform the same on behalf of and under the authority and direction of the International and their activities partake of the nature of *supervision* and *direction* of such locals or joint boards as come within the area of their activities."

Incidentally, although respondent Court did find from the evidence in the record that the International completely dominates and supervises all of the local unions with respect to all of their major and significant activities (Exhibit C, pp. 59-60) the Court did not use this finding as the basis for its decision that the International was doing business in California, that the International's representatives were carrying on activities of the International in California, and that the libels which were the basis of the cause of action arose out of activities of the International in California. These latter findings were based upon independent evidence in the record of what the International and its official representatives did in Cali-

fornia, separate and distinct from the activities of officers of Local 191.

D.

ERRONEOUS ASSERTIONS IN PETITION OF WRIT OF CERTIORARI IN BRIEF FILED IN SUPPORT THEREOF.

Every finding and assertion of fact by the respondent Court in its memorandum opinion and decision can be supported by voluminous references to the evidence in the record and to the exhibits (most of which consist of documents and reports officially published by the union itself). For that reason we have refrained from burdening this brief by referring to the many pages of evidence, in the transcript and in the exhibits, contradicting the numerous erroneous assertions appearing in the petition for writ of certiorari and in the brief filed in support of the petition. Instead we shall merely enumerate the many erroneous statements made by petitioners which are contrary to the findings of the respondent Superior Court on what are purely *factual* issues.

We have reference to the erroneous assertions of petitioners that the "Gantner and Mattern Strike Committee was organized by a group of citizens of New York City (page 2 of the Petition); that the strike committee did not jointly issue letters or leaflets with Local 191 of San Francisco or with the Western Offices of the Strike Committee; that the International as such did not publish any leaflets; that the two vice presidents were in California not as vice presidents but as officers of local unions; that the complaint filed in this action charges that the torts

took place outside of California (page 4 of the Petition); that the respondent Court ignored the distinction between the local union and the International "so as to treat the acts of the local as acts of the International and then assert jurisdiction over the International by reason of the acts of the local or its manager" (page 9 of the Petition); that the interest of the local and of the International in the present litigation "conflict" and a class suit cannot be brought (page 27 of petitioners' brief); that the libels did not originate from or arise from transactions of the International (page 33 of petitioners' brief); that the "only" connection of the International with the strike in San Francisco was the convention approval of the boycott (page 34 of petitioners' brief); that the boycott was invoked by the San Francisco local (page 34 petitioners' brief); that the complaint did not charge the International "with the commission of any libel", (p. 34, footnote 20 of petitioners' brief); that no "evidence was introduced to show participation by the International in a single libel" (p. 34 of petitioners' brief); that Jennie Matyas' activities were always under the direction of the Local and that she received her instructions from the Local exclusively and did not purport to act on behalf of the International (p. 35 of petitioners' brief); that there was no attempt to prove and there was no evidence that the International authorized or ratified the acts of Matyas, Nelson and the other representatives in respect to publication of the libels (p. 37 of petitioners' brief).

Each and every one of the aforesaid assertions is contrary to the express findings of respondent court

on these subjects and is contrary to the overwhelming evidence in the record. Almost all of the fifteen trial days and of the 2,000 pages of testimony and of the many thousands of pages of exhibits were devoted to the introduction of evidence proving the contrary of all of the above assertions made by petitioners. Petitioners were not only unsuccessful in persuading the respondent Court to adopt their view of the facts, but they were equally unsuccessful in their effort to persuade the District Court of Appeal and the Supreme Court of California to upset these findings.

E.

CONCLUSION.

The assertion in petitioners' brief (p. 16) that "it is plain from the entire opinion that the respondent is influenced by its attitude against labor unions," is utter nonsense. Nowhere in the memorandum of opinion and decision of respondent Court does there appear any indication whatever of any prejudice or bias either for or against labor unions. In order to remove any question in the matter, we make the flat assertion to this Court that respondent Court has always been recognized by labor unions in San Francisco as extremely fair and, if anything, partial *towards* labor unions in this State. Not even by stretching or distorting the facts in this case can it be said that a ruling by the respondent Court on a *motion to quash the service of summons*—and thus escape being brought to trial—indicates that the respondent Court in refusing to grant to the union an immunity not

enjoyed by any other entity, indicates or shows an adverse attitude towards labor unions. For an international union to contend that it cannot even be *sued* in California *solely* because it is a labor union, on a cause of action charging (with 35 pages of photostatic evidence attached to the complaint) that it deliberately pursued a nation-wide plan to damage and ruin the plaintiff firm through the unlawful use of defamation, is to do a disservice to the labor union movement itself.

No grave constitutional question involving due process is involved in this case. Certainly if it were involved, the District Court of Appeal and the Supreme Court of California would have issued an alternative writ. To the contrary, it was the feeling of those courts that petitioners had one of the most extensive trials and hearings ever granted to any defendant on a purely dilatory motion to quash service of summons and that the determination of respondent Court was so abundantly supported by the record and the evidence and by decisions of both Federal and State Courts that no issue of any consequence was raised requiring even a hearing in those Courts.

Under such circumstances, it is respectfully submitted that the petition for writ of certiorari should be denied.

Dated, San Francisco, California,
February 4, 1944.

Respectfully submitted,
MILTON MARKS,
MORRIS LOWENTHAL,
Attorneys for Respondents.

(13)

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 604.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION (an unincorporated association); DAVID DUBINSKY (as president of said association); FREDERICK F. UMHEY (as executive secretary of said association); and LOUIS LEVY (as a vice-president of said association),

Petitioners,

—against—

SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO, and HONORABLE ELMER ROBINSON, as Judge of said Court,

Respondents.

REPLY BRIEF ON BEHALF OF PETITIONERS.

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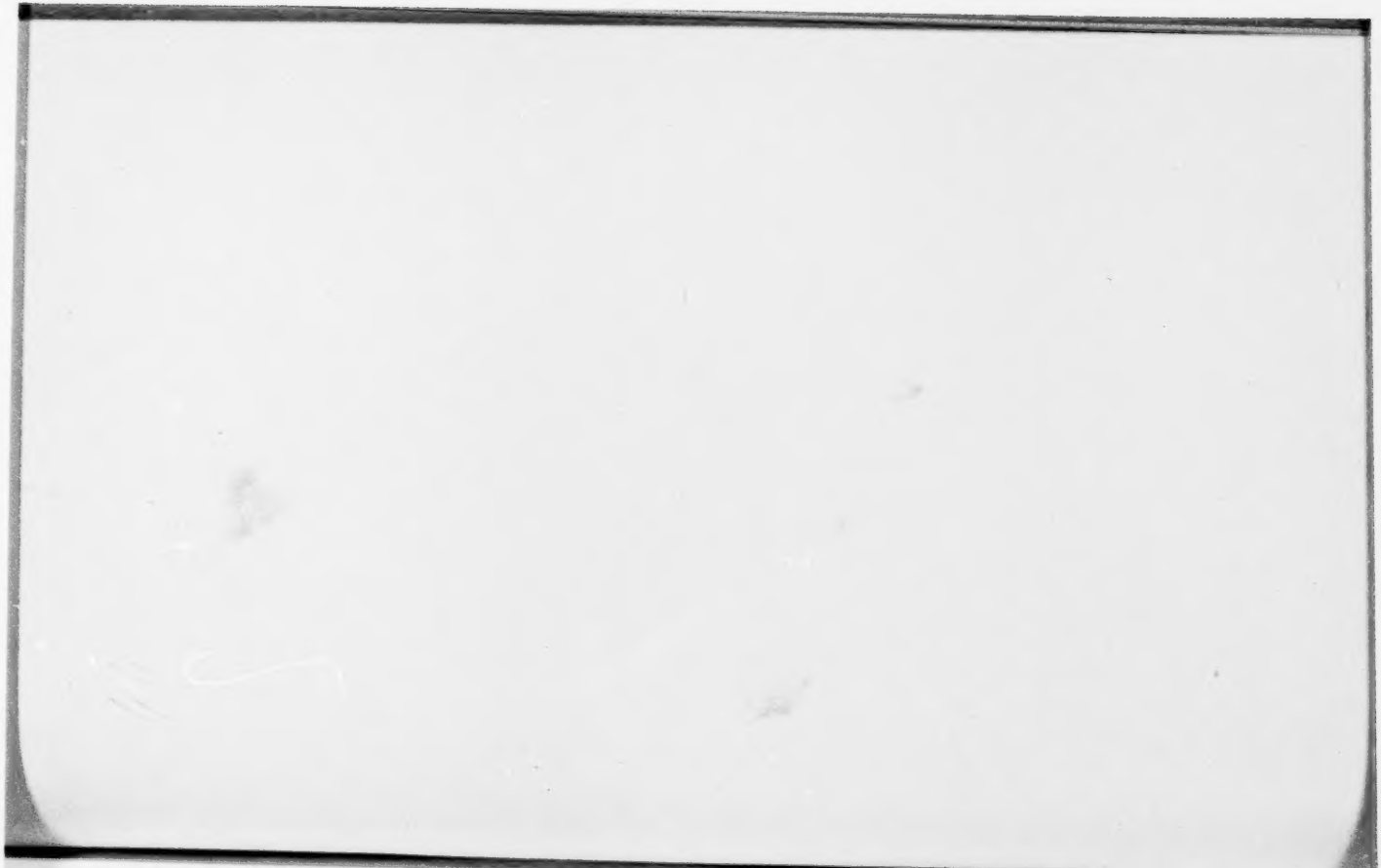

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REPLY BRIEF ON BEHALF OF PETITIONERS.

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

As a reply to the brief submitted by the respondents herein, your petitioners set forth the following:

I.

The jurisdictional points were raised in the courts below.

Respondents state in their brief (p. 4 and p. 6), that petitioners did not state the jurisdictional point in the courts below.

At page 7 of our petition we quote fully from the petition for writ of prohibition in the District Court of Appeal which shows that we expressly raised the points that are discussed in our petition. At the same page we also quote from our motions in the Superior Court, which show that we there also raised the constitutional question.

II.

There were no findings of fact in the court below.

At page 4 of its brief, respondents state that we are asking this Court to accept as the factual basis of our petition a statement of facts "directly contrary to the findings of respondent court." As a matter of fact, no findings were prepared or signed by the court. Respondent neither quotes nor cites any such findings for the simple reason that no such findings exist.

Counsel persists in treating the opinion of the respondent court as constituting findings. This is contrary to California law. It is well settled that statements in an opinion do not constitute statements of fact binding upon appellate courts.

Re Lasker, 51 Cal. App. (2d) 120, 121-2, 124 Pac. (2d) 72 (1942);

DeCou v. *Howd*, 190 Cal. 741, 214 Pac. 444 (1923).

III.

The facts relied upon in our jurisdictional statement were uncontradicted facts.

As a matter of fact, the statements of fact referred to by us were based on uncontradicted evidence. If any

statement of fact made by us was contrary to the evidence, it would have been a simple matter for respondents to have quoted such evidence or cited the record. Throughout its brief respondents refer to so-called "facts" without any support in the record. It is to prevent this distortion that this court has enacted Rule 27, which reads in part as follows:

> "27. BRIEFS. (3) Whenever, in the brief of any party, a reference is made to the record, it must be accompanied by the record page number. When the reference is to a part of the evidence, the page citation must be specific and if the reference is to an exhibit both the page number at which the exhibit appears and at which it was offered in evidence must be indicated."

We anticipated that respondents would rely upon the general statement in the opinion of the Superior Court that the publication of the libels arose out of activities of the International in California. As there is no factual basis whatever for such intimation, we reviewed the uncontradicted facts at pages 31 to 37 of our petition and brief.

What is said there need not be repeated. It is sufficient to point out that this Court cannot be deprived of jurisdiction by the bare statement of so-called "facts" which are not only unsupported by the record but are contrary to the record.

IV.

The Supreme Court of the State of California and the District Court of Appeal for the State of California did not pass upon any of the issues in the case but merely exercised discretion to deny the petition without any hearing whatever on the merits.

Commencing at page 2 of its brief, respondents state that the Respondent Court's opinion was accepted by the District Court of Appeal and the Supreme Court of the State of California. There is nothing to support such statement. As a matter of fact, neither appellate court below purported to pass upon the merits of any issues in the case but merely exercised discretion to refuse to issue an alternative writ of prohibition. No opinion was written and although the court in each instance divided, there is nothing in the record at all to justify any statement or suggestion that either appellate court accepted any contention of either side with respect to any issue of law or fact involved.

Respondents also state (p. 13) that the California state courts have uniformly construed its state statutes as expressly granting to the state courts jurisdiction over foreign associations or foreign causes of action. Respondents cite no case and make no reference to the record to substantiate this statement.

If there were such a decision, it would have been a simple matter for respondents to cite the case. If there were contrary "facts" counsel could have referred to the evidence in the record by page number.

V.

The brief for respondents ignores our main contention as to the law and distorts this Court's decisions.

Respondents, inadvertently or deliberately, misconceive the point of the petition, erecting instead the proverbial straw man in order grandiloquently to destroy it.

Petitioner urged that defendant International, being a foreign labor union, was not subject to the jurisdiction of California upon a foreign tort that did not arise from business transacted by it in the state. The argument rested upon the fact that the International *is a labor union*, an unincorporated association, and that the decisions of this Court had held a state's process could not reach the foreign association.

In the face of our express statement to the contrary, respondents attempt to reduce our position to the argument that labor union *is to be treated like a corporation*. Thus, on page 16 of its brief, respondents state:

> "The major premise of petitioners' argument having no basis or foundation, the balance of the argument falls of its own weight. If corporations can be subjected to the jurisdiction of the State Courts upon foreign causes of action petitioners must concede that associations such as labor unions could likewise be subjected to the jurisdiction of the State Courts."

Yet, this distorted statement not only overlooks the petition itself but this Court's ruling in the case of *Flexner* v. *Farson*, 284 U. S. 289, 63 L. Ed. 250 (1918), and the later decisions interpreting the *Farson* principle,

which hold that the extrastate partnership is not amenable to the forum's service, even if a corporation may be.

Respondents do not even mention the Farson case.

Respondents do not even allude to our argument that a labor union could not be held by the serving jurisdiction upon a foreign tort under the recent cases interpreting the Farson doctrine. (See Brief in support of petition for writ, pp. 17, 18.)

Nor do respondents so much as address themselves to the proposition that the International could not be served under the California Statutes, such as Sections 388, 382 and 411, without violation of the principles above stated.

These propositions are apart and aside from any alleged claim that the cause of action arose out of activities of the International in California.

Respondents fail to meet the main proposition of the petition. They address themselves merely to the single argument that the process of a state may extend to a foreign corporation upon a foreign tort which does not arise from business transacted by the corporation in the state. Here, respondents argue that, since the foreign corporation is amenable, the foreign labor union must also be amenable.

In the first place, even assuming the validity of respondents' legal position, we have already pointed out that there is considerable question as to its application to a labor union. This Court has long recognized the difference in classification between the corporation conducted for profit and the labor union membership association. It would be to close one's eyes to the social facts and implications of the day to assume that the profit-taking corporation is the same before the law as the labor union. Although this Court might hold that the serving state could exercise jurisdiction over the foreign corporation for all of its acts, whether domestic or foreign, it could well reach the opposite conclusion as to a labor union as we pointed out in our main brief (pp. 14 *et seq.*).

In our case, actually the lower court reversed that process and held the labor union, although the *foreign corporation is not amenable to the California jurisdiction upon a foreign cause of action.*

We submit that the respondents' failure to distinguish between the foreign labor union and the foreign corporation cannot stand.

In the second place, respondents misconceive the law as to corporations and our position in regard to it. We pointed out that the situation as to service upon a foreign corporation fall into two groups: that in which a corporation *expressly* appointed an agent for service and that in which it did not. In the former situation, we argued the corporation was serviceable to the extent provided by the statute to which it had consented; in the latter it was not serviceable upon foreign causes not arising from domestic business because such serviceability violated due process.

We emphasized the fact that, if we applied the corporate analogy to our case at all, it fell into the first group, since the International *had not appointed* any agent for service. Upon the basis of an "implied" appointment, this Court has forbidden the exercise of jurisdiction in a case such as this.

Respondents' passing answer is that this rule applies only to service upon a public official, but, as we pointed out (Brief, pp. 22-24), the cases do not support such a distinction and the main authority relied upon by respondent (Bowers, Process & Service, p. 500) holds that "if there is a difference, it is so infinitesimal as to be well-nigh imperceptible".

Respondents thus completely fail to meet the issue in the decisions concerning foreign corporations, which hold that the state's process does not extend to the foreign tort that does not arise from business transacted in the state where an "implied appointment" exists.

Respondents even confuse the law as to *express* appointments. Here, of course, the question concerns the *construction* of the applicable state statute and the Court has ruled that in such a case as this the construction must be a *strict one*, and against any interpretation of the statute which would cover such foreign torts. Yet, respondents urge the very opposite rule of construction.

Although the respondents recognize that this Court has adopted the rule of strict construction of an express appointment (*Missouri Pacific Railroad Co.* v. *Clarendon Boat Oar Co., Inc.*, 250 U. S. 533, 66 L. Ed. 354; *Mitchell Furniture Company* v. *Selden-Breck Construction Co.*, 257 U. S. 213), they argue that this rule is not generally accepted. On page 10 of their brief, the respondents state: "Under such circumstances a few of the Federal District Courts have been inclined to follow the rule of the Missouri Pacific Railroad Company and the Mitchell Furniture Company cases of strictly construing these statutes so as not to encompass foreign causes of action, particularly where process was served upon a public official of the state. However, the great majority of the recent decisions of the Circuit Courts and the District Courts are inclined to follow the rule, almost universally applied by the State Courts, of liberal construction of the state statutes to include foreign causes of action." Thus, in the face of this Court's opposite rule, respondents urge a "liberal construction" of the state statutes.

It is clear that the strict rule of construction must be applied to the California statutes. That, indeed, was the rule applied in *Miner* v. *United Airlines Corporation, Inc.* (S. D. Cal. 1936), 16 Fed. Supp. 930, and *Fry* v. *Denver & R. G. R. Co.* (N. D. Cal. 1915), 226 Fed. 893, which held that the California statutes did not cover a foreign tort that did not arise from business transacted by the foreign corporation. Respondents ignore this decision because it expresses the rule of this Court.

Basing its argument upon a liberal construction of state statutes, respondents argue that the California statutes cover the present tort. In the first place, this interpretation violates the language of the statutes (Brief in support of petition for writ, p. 21). In the second place, the respondents ignore the cases (Id., p. 21). In the third place, the respondents erroneously assume that California has interpreted its statutes through the medium of the instant case. The California courts, of course, did no such thing. Denial of a writ of prohibition does not pass upon the merits of the case and even less upon the construction of statutes which may possibly be involved in it.

Each of respondents' cases involved interpretations by lower state and federal courts of an express appointment of an agent for service. This is true of *Trojan Engineering Corp.* v. *Green, M. T. P. Corp.* (Mass. 1936), 200 N. E. 117; *Southern Ry. Co.* v. *Parker*, 21 S. E. 2d 94 (1942). It is utterly immaterial to this case what construction was placed upon a different state statute by the court of that state.

Likewise, *Canadian Pacific R. R. Co.* v. *Sullivan*, 126 Fed. 2d 433, involved the construction of the Massachusetts Courts of its statute for service under an express appointment by a corporation. This, and the cases cited on pages 12 and 13 of respondents' brief, is predicated upon the indefensible assumption that the California Courts have heretofore ruled that an express appointment of an agent covers a foreign tort that does not arise from corporate business in the state.

Respondents' final argument once more returns to the situation regarding a partnership or association, and in this respect it quotes from the Restatement of the Law.

We are astounded at respondents' contention (p. 15) that the Restatement of the Law does not hold that jurisdiction "over a corporation or an association" may be extended only over foreign torts which arise from business transacted by the association or corporation in the state. The section speaks for itself. Indeed, respondents' own citation, *Western Mutual Fire Ins. Co.* v. *Lamson Bros. & Co.* (1941), 42 Fed. Supp. 1007 (Respondents' Brief, p. 17), holds in accordance with the Restatement of the Law that the partnership is liable only upon causes of action growing out of business transacted within the state. Holding that the partnership was to be distinguished from the corporation and that the former could not be charged with liability for a foreign cause, unless it arose from business transacted within the state, the court found in that case that the partnership was a suable entity, that it engaged in business in the state and that the cause of action arose from it. The language of the decision reads:

> "Under our system of government an individual citizen of a State is also a citizen of the United States and as such citizen of the United States he has a right, without interference on the part of any State, to transact business anywhere in the United States. For this reason a State, other than that in which he is a citizen, may not burden this right to do business in other States by making him amenable by substituted services to process under the laws of such other States on the ground that the privilege of doing business in such other State carries with it an obligation to be amenable to the courts of the State in which he is so doing business. See cases *infra*."
>
> "In the American Law Institute, Restatement of Conflict of Laws, the rule is stated as follows: 'Sec. 86. Partnerships or other Unincorporated Associations. (1) A partnership or other unincorporated as-

sociation, by doing business in a state in which the partnership or association is subject to suit in the firm name, subjects itself to the jurisdiction of the state as to causes of action arising out of the business there done'" (p. 1012).

In conclusion, we submit that the petition for certiorari should be granted.

Dated February 23rd, 1944.

Respectfully submitted,

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